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EDITORIAL

WASHINGTON ENCOUNTER

From October 27 through October 30 a symposium on the Middle East will be held in Washington, under the aegis of the respected Israeli magazine *New Outlook*. What lifts this conference out of the ordinary is the presence among the participants of a number of Israelis and Palestinians. Although similar meetings have occurred in Paris and elsewhere, this is the first time that representatives of the two sides —along with Americans, Europeans and Arabs—have been brought together publicly in this country. The stated intention is to advance "awareness of the centrality of the Palestinian problem" to "genuine peace in the Middle East."

In August, when fifteen members of the Knesset announced their intention to attend the symposium, a furor was touched off in Israel, and there were kindred incidents of opposition among Palestinians. As the aftermath of the Andrew Young resignation proved, private diplomacy can unleash storms of emotions. There are deep-set fears on both sides that even unofficial overtures, in which the intention is only to talk about talking, may be misconstrued.

Too often in this country the Israeli-Palestinian conflict is framed in stereotypical terms. Reality is, of course, much more complex—as the heated debates in the Knesset and factiousness in the P.L.O. demonstrate. After weeks of the headlined adventures of an opportunistic Rev. Jesse Jackson, emotional rhetoric blanketing all Palestinians as "terrorists" and Fidel Castro's comparison of Zionism to Nazism, it is time to listen to a sampling of the voices of the people of the region who are most directly affected. *New Outlook*'s symposium could provide an instructive microcosm of both the dialogue that is, and the dialogue that must be, if peace is to be achieved.

DOUBLE PRESIDENTS
Frances FitzGerald

SURVIVING SALT II
Richard Falk

CARTER'S SUPERLAWYER
Mark Green

INSIDE THE I.R.A.
Jack Holland

REVISING AMERICA
William Appleman Williams

CLURMAN AT THE MOVIES

RUSH TO DEATH

SPENKELINK'S LAST APPEAL

This week Jesse Bishop is scheduled to die in the gas chamber in Nevada. He has pleaded guilty and refused to authorize appeals. The twelve-year unofficial moratorium on capital punishment in this country—a moratorium interrupted only by the death by firing squad of Gary Gilmore, who demanded to die—was ended by the electrocution of John Spenkelink on May 25. During the sixty-five hours prior to Spenkelink's death, a last-ditch appeal was mounted by two Georgia lawyers, Margie Pitts Hames and Millard Farmer, and former U.S. Attorney General Ramsey Clark, a longtime opponent of capital punishment. The following is Clark's account of that appeal, excerpted from a longer version. The issue Clark and his colleagues raised had not been previously considered in the six years of appeals in Spenkelink's case: did he have adequate representation by his court-appointed counsel as required by the Sixth Amendment? The question was a grave one, but beyond that, Clark shows how the judicial system brushed it aside, brooking no further delays in the State of Florida's implacable drive to activate the death penalty. —The Editors

RAMSEY CLARK

John Spenkelink was scheduled to die at 7:00 A.M. Wednesday, May 23, at Raiford Prison in Florida. Tuesday morning I flew from my home in New York City to Jacksonville, where I was met by Henry Schwarzschild, director of the American Civil Liberties Union's Capital Punishment Project. We drove to Starke, Florida, near Raiford Prison to protest the execution and to bear witness.

After a late-morning press conference outside

(Continued on Page 400)

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LETTERS.

THE BEAT GOES ON

Brooklyn, N.Y.

Thank you for your excellent article on robotization at the disco and elsewhere [Mark Crispin Miller, "Turned On, Tuned Up, Burned Out," *The Nation*, Aug. 25-Sept. 1]. One point left out: the meaning of the consistent base beat of disco. It is literally a technological mother's heartbeat.

When pups and kittens are first taken away from their mothers, an alarm clock—a robot mother's heart—is left to lull them to sleep at night. A disco dancer carries his mother's technological heartbeat along in life and never needs to take the leap into the disorderly and metamorphic experience of adulthood. . . .

Most disco dancers belong to the aging adolescence of the "singles" world, but they do not live alone. Beneath the spider plants, tucked in a corner of the small apartment, between the altar pillars of electrostatic wall speakers rests mother's heart. More dear than any roommate, always close and venerated, all it takes is a flick of the switch when the first intonations of desire or anxiety slip in, and gently forth comes the thump, thump of the primordial disco base line in quadraphonic sound.

Mark Crispin Miller is a genius. More from him, please. *Bernie Quigley*

JOINING THE PACK

Shelburne Falls, Mass.

I have subscribed to *The Nation* for forty years. The country needs professional faultfinders, and *The Nation*'s faultfinding has usually—though not always, in my judgment—been justified by the facts and not unfair in presenting them. I am therefore shocked and disgusted by Marcus Raskin's display of personal venom in his editorial attack on Jimmy Carter ["What Billy Knew," *The Nation*, July 28-Aug. 4] as "vengeful, suspicious and possessed"—epithets descriptive of the totally suppositious ill-treatment accorded to his brother Billy and of the alleged "cruelty" of the Cabinet "purge." The editorial is not merely malicious—it is intellectually contemptible. It recalls Republican attacks on Franklin Roosevelt during the 1930s.

I will not try here to defend Jimmy Carter's policies and actions, though most of them can be defended. And I agree that Billy Carter deserves sympathy, but as a victim not of his brother but of the news media's feverish search for sensation. As for the Cabinet changes, I share the widespread feeling that Joseph Califano deserved to be retained, but on the whole, I think the Cabinet has been strengthened. The procedure seems to have been inept, but the ineptitude has been grossly magnified by the characteristic hostility—the calculated hysteria—of the news media. I am sorry to see *The Nation* abandoning its integrity and joining the pack. *Ellsworth Barnard*

Washington

I apologize to Mr. Barnard and any other readers whose sensibilities I might have offended. Indeed, there is much to praise in Carter's foreign policies. He has attempted to curb the more aggressive elements of the national security state and Cyrus Vance has been a remarkably effective Secretary of State. Carter has also dropped witch-hunting as a means of attaining internal cohesion. No wonder there is a wave of "feeling sorry" for President Carter among liberals. This sentiment is not warranted. Carter is a big boy who is calculating and shrewd. He is no one's victim, except his own.

Marcus G. Raskin

EXCEPTION TO BAYH

Chicago

Your September 8 issue was really first-class. I recommended it, as well as the previous week's issue, in a speech I gave recently to the Libertarian Law Council in Los Angeles. However, I take exception to Herman Schwartz's statement that the Birch Bayh Foreign Surveillance Act is a "surprisingly good law" and also to his statement that it is "one of the most innovative and encouraging developments in recent memory" ["The Wiretap Decade," *The Nation*, Sept. 8].

Liberals, such as Mr. Schwartz, seem to have a "death wish" when it comes to the use of law that is in violation of the Constitution and the natural law. The Bayh Act intended to and has been utilized to "wash" unlawful wiretaps that were in place prior to enactment.

The proposed Federal Bureau of Investigation "charter" (whether amended or not) will be utilized to sanction conduct which is likewise in violation of the Constitution, the natural law and the rights of the people. Morton Halperin can't even effect the removal of the infamous name of J. Edgar Hoover from his building, which, as you know, dwarfs the Department of Justice.

As long as the F.B.I. is as big as it is and spends as much as it spends and has as many criminal laws as it has to feed on (the "new" Federal criminal code continues to expand Federal jurisdiction), it will violate the people's rights, notwithstanding the most stringent charter. After all, wasn't it the Central Intelligence Agency that violated its charter not to enter into domestic surveillance activities?

Mr. Halperin's own Conference to Stop Government Spying agreed that the F.B.I. and the C.I.A. should be abolished. He didn't agree at the time, but he cannot change the fact. The Bayh Act is nothing more than an attempt to "pull the wool" over our eyes. It has already legitimized thousands of previously illegal wiretaps.

Shelly Waxman
Libertarian Lawyers Alliance of Illinois

SUPPORTING DICTATORS

New York City

I was most interested to read the article by Cynthia Brown on Guatemala ["Guatemala—the Next Nicaragua?," *The Nation*, Aug. 25-Sept. 1]. Her revelations about the murderous actions taken by that regime against the Coca-Cola workers who are seeking to protect their fundamental rights came as no surprise, since the Interfaith Center's report had been brought to my attention by Bill Somplatsky-Jarman of our Union Label Department.

Yet I fail to understand our Government's unwillingness to recognize that supporting military dictators inevitably leads to the triumph of extremists, whether from the right or the left.

If we were truly interested in creating stability in Latin America (and elsewhere) we would do better to aid the democratic socialist forces who are seeking to redress the social and economic injustices that nourish both fascism and Communism.

Sol Stetin, Director, Textile Division
Senior Executive Vice President
Amalgamated Clothing and
Textile Workers Union

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EDITORIALS.

Trade-Off Time

If we want to enjoy full employment, we shall have to sacrifice price stability and if we want price stability, we shall have to sacrifice full employment—that is the trade-off theory we were all taught in Economics 101 by the man who wrote the text, Paul Samuelson. More recently, the economics establishment has amended the latter part of the proposition to read: *If we want to reduce the rate of inflation from 14 to, say, 9 percent—we must pay the price of a recession.*

As a tried-and-trusty addition to economic jargon, "trade-off" has a semantic multiplier effect: it propagates myths that can cloud men's minds. The term reduces problems of choice to an either-this-or-that formulation—a situation that rarely exists in the real world. We do not choose between going to a Broadway show *or* eating out at a restaurant exclusively; there are a host of other considerations that enter in—including paying the rent, medical bills, etc. Their bones that prices in the real world are continually pushed buying a new dress, saving up for a vacation or subscribing to our favorite magazine.

Even more mischievously, the term, as it is used, assumes a world of trade-offs without traders. It is as though Wall Street savants talked about the market without reference to buyers and sellers; it is like talking about speculation without speculators—the market as the interplay of impersonal economic forces rather than volatile human beings and institutions exhibiting the whole panoply of human psychology from greed to altruism. In the abstract world of establishment economics only two corporeal bodies are recognized. One is the vile OPEC cartel, to which is attributed the power to impose administered prices without the slightest brotherly help of our own Seven Sisters. The other, equally villainous, is American labor, which is always upsetting "our" apple cart by demanding that its wages at least keep pace with the rising cost of life.

Yet even Arthur Burns and Milton Friedman know in

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up by well-organized corporate price-setters, usually acting with the direct or indirect blessing of Federal, state and local government bodies. Knowing this central fact of modern capitalism, however, is different from writing it down. That task is left to the radical economists, whose prose is usually too arcane to be understood by the intelligent layman, or to the likes of John K. Galbraith and Robert Lekachman, whose remarkable literary skills practically disqualify them as economists. Galbraith, Lekachman, Bertram M. Gross and a few other infidels actually suggest that the way out of the jobs-or-sound-dollars dilemma is public price controls imposed on the largest corporate price-setters. To this prescription we would add a generously measured dose of selective credit controls to replace the Federal Reserve Board's drastic emetics—and also some major restructuring of the institutions that now control energy, food, housing, medical costs and interest rates, the key items in the consumer's inflation package. (See Bertram M. Gross, "Anti-Inflation for Progressives," *The Nation*, June 23.)

The introduction of these ideas brings the actors back into the drama. It removes the blinkers of monetarism and enables us to see through the synecdoche the official economists have constructed, by which the corporate establishment stands for the interests of all, to the enormous variety of people and groups—middle-class, working-class and poor—who are designated to make the major sacrifices.

With this in mind, we should further understand that there are three presumed objectives in our economy—uncontrolled corporate power, reasonable price stability and high growth and employment. *But we cannot have all three at the same time.* If the first objective is regarded as sacrosanct, as it is now, given the balance of political forces, then America cannot realize the other objectives, and the majority of Americans will be whipsawed during the coming years by the double-misery combination of stagnation and inflation—in other words, stagflation. But if the first objective would be sacrificed, then it would be possible to bring inflation and unemployment down to the levels prevalent in West Germany, Sweden or Japan. With sufficient public investment channeled into meeting human needs, the taming of the business cycle could be achieved, along with reductions in war spending and a crimping of the power of the military-industrial complex. But first, the people must be made to understand the real trade-off. *It is the trade-off between uncontrolled corporate power and relief from stagflation.* One or the other but not both.

If America is to have both price stability and full employment (in the sense of guaranteed jobs), then corporate power must be controlled by a democratic planning system which includes both selective price controls and major expansions in public investment. But if such a system itself is not to be taken over by a new corporate state, then the new planning system must be widely decentralized and the power of bureaucrats countervailed by citizen and political action at all levels. These ideas might well be dramatized by incorporating the best principles of the early versions of the full employment acts of 1946 and 1978 into a new Anti-Inflation and Job-Guarantee Planning Act of 1980.

Any Man's Death

Gary Gilmore of Utah was eager to be executed; Jesse Bishop of Nevada is merely willing; John Spenkelink of Florida fought against it until the current hit him. These distinctions are unimportant. The issue of the death penalty is simply whether the state is entitled to kill human beings. If the answer is yes, the state cares not one whit about the victim's preference; if the answer is no, the victim's consent cannot ratify a lethal social ritual.

Utah's volunteer firing squad did in 1977 what Gilmore had demanded. Spenkelink went, bound and gagged over his desperate opposition, to the electric chair in May (see Ramsey Clark's cover article). Bishop's conflict between his desire to live and his refusal to act to save his life has been resolved against him by the U.S. Supreme Court, and he will most probably go to the gas chamber, still denouncing the lawyers, the American Civil Liberties Union and the church people who have been trying to stop the State of Nevada from committing the third court-ordered homicide in this country since 1967.

Down at the state penitentiary in Starke, Florida, late in May, it was awesome—indeed, terrifying—to realize that the authorities of the state had the courage to do what they thought they ought to do. Not even shame stayed their hand. Proclaiming themselves responsible Christians to the end, they pulled the switch on that Friday morning and, with design and ceremony, killed a human being. In the era of deadly governmental violence to millions, one could hardly reckon the execution of John Spenkelink to have been the worst, the most repugnant act of official bloodshed in one's consciousness. After all, he had killed another person (perhaps in self-defense—we'll never be sure); he had a battery of appeals lawyers working for him without pay for six years, and many thoughtful and passionate people had offered comfort to him and to his family before his mean end.

Yet there may be a special horror, a repulsion quite its own, about the carrying out of a sentence of execution against a specific person whose name and face one knew, who was alive one moment and was to be killed the next, by our agents, under the eyes of our surrogates. That horror derived not from his dying, for he shared that experience with every mortal, nor from any affection or respect for him, for little in his life suggested that he was fit to be liked as a friend, much less celebrated as a saint or hero. The horror came, rather, from a Moloch-state's methodical perseverance in destroying the life of a human being, its almost impersonal eagerness to kill some one person in order once again to establish its own ultimate power to do so.

There was a special horror in the ceremoniousness of the killing; there was a horror in the disinterestedness professed by the state in the process of designating the person to be killed, in the gratification taken by the public in retributive brutality, in the smugness of public officials as they usurped

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life-and-death judgments about human beings, in the obscene sanctimony of the Governor, in the gleeful ambition of the Attorney General, in the banal devotion to civil duty of the warden. There was a horror in our having the United States back in the company of countries such as the Republic of South Africa and the Soviet Union, those nations that kill their citizens in the ordinary practice of their criminal-justice system.

We now have more than 500 people on death row in the United States and are adding over 100 more each year. There will be no immediate bloodbath, because our legal procedures are more protracted than the Ayatollah Khomeini's. But we have American executioners again, leather hoods and all, and we can expect their schedules to be filling up next spring. We presume to be a beacon of human rights to the nations of the world. We should like to think of ourselves as a humane and enlightened civilization. But we insist that the way to solve a social problem is to kill people.

In time, we shall look back upon this, as we now look back upon chattel slavery and other examples of our national pathology, with shame. HENRY SCHWARZSCHILD

Henry Schwarzschild is director of the Capital Punishment Project of the American Civil Liberties Union.

The Bi-Presidency

"We are wearing people out with politics. We'll wear out the public, wear out the committees, wear the candidates out and wear out the press."
—Nancy Reagan, in *The New York Times*, April 13, 1979

"The Carter campaign has unexpectedly put the draft Kennedy movement on the defensive [in Florida] with an all-out push over the last two weeks. . . . So frantic have some of the logistical tactics become that . . . a pro-Carter leader in Miami boasted that her side had cornered all the available public buses for that region on October 13th, thus hobbling the Kennedy efforts to bus supporters to the one caucus site in Miami. But a Kennedy backer said with a smirk, 'We lined up 60 buses from a guy who operates them for the private schools. Our people will be there.'"
—*The New York Times*, September 27, 1979

The United States needs another chief of state. Not one to perform ceremonial functions—the post of United Nations Ambassador was set up expressly for this—but a President to run the country while the other one runs for office. I am not speaking personally here. The need for a new President did not begin with Jimmy Carter's Presidency; it is an institutional requirement that has been developing for some time and can only continue to grow in the future.

Twenty—no, even ten—years ago there used to be some time between election campaigns. In the early 1960s candidates would give the President as much as three years before they began to challenge him, and it was often January of election year before they formally announced their candidacies. Even the darkest of horses would decently wait until the primaries before incurring a campaign debt. But in the early 1970s all this began to change. George McGovern decided to run for the 1972 election in mid-1970 and spent a full two years building a grass-roots organization that would take him victoriously through the primaries. Jimmy Carter—according to one biographer—laid plans to run in the 1976 election before the 1972 inaugural; he began his campaign in New Hampshire a year before the first primary and went on to spend the rest of 1975 shaking hands in Iowa and other key states. McGovern and Carter were not, of course, personally to blame for this. They were merely showing an intelligent grasp of the newly evolving system whereby delegates to the nominating conventions are chosen not by party bosses but by primaries or democratically elected party caucuses in almost all states. It was only a matter of years before the Republicans grasped this too. For the 1980 election Lowell Weicker began his campaign in March 1978; others were not long in joining him. By April 1979, eight declared and two undeclared Republican candidates were campaigning full-tilt through the primary states; John Connally had raised $1.3 million, George Bush had raised $663,000 and Philip Crane had already gotten himself $880,222 in debt. That same April, ten months before the first primary and nineteen months before the election, President Carter began his unofficial re-election campaign and Senator Weicker conceded defeat.

If this trend to earlier campaign kickoffs continues—and there is no reason why it should not—we will, by the year 2000, have Presidential election campaigns coterminous with the Presidential term in office—which is to say, perpetually.

In theory, the virtue of a lot of primaries and a long campaign is that they create a dialogue between candidates and voters: the candidates have the time to test their ideas, policies and programs on the voters and the voters have the time to evaluate them. In practice, the new system does nothing of the sort. Indeed, from the past few campaigns there would seem to be an inverse ratio at work: the more time candidates spend campaigning, the less they talk about issues. With the 1980 election campaign already half over, chronologically speaking, there are thirteen candidates in the field—including Gov. Jerry Brown, Gerald Ford and Senator Edward Kennedy—and no issues to speak of. Jimmy Carter took no stands on any issues in 1976; Richard Nixon took none in 1972. In fact, George McGovern was the last Presidential nominee to talk about the issues—and look where that got him. (Jerry Brown's first issue—his proposal for a constitutional amendment to create a Federal debt ceiling—may have ended his campaign before it even began.) What substitutes for issues in campaign rhetoric is a lot of talk about "leadership." This talk is of course ironic since the more there is of it, the less candidates seem to have anywhere to lead anyone.

The vacuity of campaign rhetoric is not in itself the problem: the Republic has survived a great deal of that in the past. The problem is a parallel development in the Government itself. That is, the more candidates have advanced the

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campaign schedule, the more Presidents have seemed to delay getting on with governing the country. Increasingly, it is the tendency of all Administrations to put off the major issues to the next Administration. President Kennedy, for instance, put off making a decision about the Vietnam War. President Johnson decided to fight that war but then held off paying for it—with the result that we are now paying for it in inflation. President Nixon tried to defer defeat in Vietnam until he was out of office, and though he wasn't successful in that, he did succeed with southern Africa and the Middle East. President Carter has thus far not dealt with the energy crisis and inflation—though if his current campaign is successful he may end by having to do something about them.

In the future the tendency to postpone governing can only become more pronounced. Obviously, the more time an incumbent spends campaigning for re-election, the less time he has for government. (And in times like these, when the major issues are nearly intractable, campaigning is much more fun than trying to deal with them.) But, then, even if the incumbent is not a candidate, the campaigning of others distracts the Congress, the press and the public from what he says and does—thus making it far easier for him to follow his natural inclination to put things off. Finally, of course, the longer the campaigns, the more the electoral process will favor candidates who are good at campaigning rather than ones who would be good at being President.

There is thus much to be said for creating a second Presidency. In addition to giving the President some time to govern, a second Presidency would solve the whole problem of campaign financing since the President running the country would not be the one who received large campaign donations from special-interest groups. Then, too, because the President not running would supply leadership, the candidates would gain nothing by talking about it: they would have to talk about issues. On second thought, though, one might achieve something of the same effect by simply shortening the length of Presidential campaigns by law.

FRANCES FITZGERALD

Frances FitzGerald, a member of The Nation*'s Editorial Board, is author of* Fire in the Lake *and* America Revised.

Consumers Union

The grand old man of consumerism stepped down last week, and although Colston E. Warne, president of Consumers Union, will continue to serve on the board of directors of the organization he founded, his retirement at age 79 is a milestone worth noting. Indeed, *The Nation* can claim the honor of having given Dr. Warne a small boost at one point in his career. You see, in its struggling early days C.U. was anathema to business (whereas now, we assume, it is merely cordially disliked by some), and magazines, being dependent upon advertising by makers of products that *Consumer Reports* was criticizing, refused to let the organization advertise in their pages. Every magazine but one, that is—*The Nation*.

We say this not to blow our own horn—for we are here to raise a trumpet fanfare for Dr. Warne—but to underscore the odds Dr. Warne faced back in 1936, when he founded Consumers Union of United States Inc. in New York. Typically, in view of Dr. Warne's early identification with the labor movement, the new organization was formed by a group of ex-employees of another consumer-product testing organization, who had been on strike. Dr. Warne sided with the strikers and headed up the new organization, while continuing to teach at Amherst College. Through the magazine *Consumer Reports* and a hectic speaking schedule, he spread the message of an organization that would give consumers the opportunity to "buy by test, rather than by paid testimonial." It took a while for the message to catch on, but now *Consumer Reports*'s paid circulation is at an all-time high of 2.3 million, and consumerism has spread over the world, in part through the work of the International Organization of Consumers Unions, which Dr. Warne helped form in 1960.

On October 19, Dr. Warne's many friends and disciples gathered to honor him at a dinner at the United Nations. We congratulate Dr. Warne on his achievements and wish him a busy, happy retirement.

Banning Books

When the Island Trees, Long Island, Board of Education banned books by Kurt Vonnegut, Bernard Malamud, Langston Hughes and other prominent writers in 1975, many thought that this was an isolated example of buffoonery that would be quickly squelched. This August, the banning was upheld by a Federal court. Although the New York Civil Liberties Union is appealing the decision, the United States Supreme Court's current hostility to First Amendment freedoms makes many librarians fear that a nationwide precedent will be set, leaving them at the mercy of book-banning yahoos.

The Island Trees story began when the school board's president, Richard Ahrens, and two fellow board members attended a 1975 conference at Watkins Glen, New York, sponsored by a right-wing organization, People of New York United (PONY-U). There they obtained a list of thirty-two "objectionable" books and, on their return to Island Trees, discovered that nine were on the shelves of the district's high school library. They turned up a tenth book at a junior high school and an eleventh on the reading list for a literature course for high school seniors. The school board banned all eleven: Vonnegut's *Slaughterhouse Five*; Malamud's *The Fixer* (an account of the persecution of the Jews in czarist Russia which was apparently banned because the school board members or their ideological mentors

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thought it was anti-Semitic!); Hughes's collection of *Best Short Stories by Negro Writers*; *The Naked Ape* by Desmond Morris; *Down These Mean Streets* by Piri Thomas; *Go Ask Alice*, anonymous; *Laughing Boy* by Oliver La Farge; *Black Boy* by Richard Wright; *A Hero Ain't Nothing but a Sandwich* by Alice Childress; *Soul on Ice* by Eldridge Cleaver, and *A Reader for Writers* edited by Jerome Archer (banned because the board didn't see the humor in Jonathan Swift's classic essay, "A Modest Proposal"). These books, the Island Trees board said when it banned them, are "anti-American, anti-Christian, anti-Semitic and just plain filthy." Eventually, *Laughing Boy* and *Black Boy* were restored to the library, though the latter may be seen by students only "on a restricted basis."

Book-bannings have proliferated around the country. Ordinarily, they attract little attention. Some librarians, fearful for their jobs, simply acquiesce and remove books when objections are raised. On those occasions when the book-banning has attracted public notice and litigation has followed, judicial decisions have generally restored the books to library shelves. The Island Trees litigation started under a cloud, however, because in 1972 the U.S. Supreme Court had refused to review a decision by the Court of Appeals for the Second Circuit that upheld a New York City local school board's restriction of student access to Thomas's *Down These Mean Streets*.

In his August decision, Judge George C. Pratt went far beyond the reasoning in the earlier case. "While removal of such books from a school library may, indeed in this Court's view does, reflect a misguided educational philosophy," the board had a right to remove the books because, according to the judge, "One of the principal functions of public education is indoctrinative, to transmit the basic values of the community. . . . A constitutionally required 'book tenure' principle would infringe upon an elected school board's discretion in determining what community values were to be transmitted."

It would be folly to deny that education indoctrinates. Judge Pratt's decision, however, transforms "is" into "ought": it is tantamount to saying that because American society is corrupt and racist, *therefore* schools should foster corruption or racism. Whichever group gains power, as he sees it, is entitled to indoctrinate students according to its own ideology and to cut off students' access to differing ideas or information. Extending this principle, the school board could ban speakers whose views it dislikes. Judge Pratt's disparaging "book tenure" analogy could be applied to teachers, implying that academic freedom derives from a contractual relationship to a school board. The Island Trees Board of Education, or any other, would be free to interrogate teachers on their political views before hiring them and give tenure only to those whom the board believes would indoctrinate students correctly.

A few weeks after Judge Pratt's decision, I addressed a convention of librarians in Arizona. Those attending from small towns made it clear to me that they are regularly harassed for stocking books like those at issue in the Island Trees case. If they can't count on the Federal courts to protect them, they feel defenseless. Like Laetitia in Henry Fielding's picaresque novel *Jonathan Wild*, who prevented ravishment by timely compliance, they may avoid unpleasantness by self-censorship.

The prospects for overturning Judge Pratt's decision in the Court of Appeals for the Second Circuit are far from good because of its decision in the *Down These Mean Streets* case. The next appeal would go to the Supreme Court. If it is heard there, educational organizations must take responsibility for helping to avert a disastrous result. They should start now by making it clear that they reject Judge Pratt's view that a purpose of public education is to indoctrinate students with the ideology of those elected to serve on school boards.

ARYEH NEIER

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ARTICLES.

SECURITY BEGINS AT HOME

Surviving SALT II

RICHARD FALK

There was a time that I shared the rather cavalier attitude of one editorial observer: "The SALT initiative can't lose. If it goes through, it will set a good mood for what needs to be done internationally. If it flops, it will emphasize [that] what needs to be done *needs* to be done." Now I take a far more concerned and pessimistic view of the situation. If SALT II passes, the price will be so high on several different counts that it will make no net contribution to the safety of the world or the security of the nation. If SALT II is defeated, however, it will almost certainly contribute to increased international tensions and to an even greater investment in the arms race.

As an American citizen long concerned with the subject matter of international security, I find the drift of national debate on the SALT II treaty to be of far more disturbing consequence than the various pros and cons about the provisions of the agreement itself. At best, SALT II offers a marginal achievement from an arms control point of view,

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one that does not go nearly far enough given the dangers and social costs of a continuing arms race. But the pressures exerted on treaty advocates by SALT critics have negated even this small hope. As is now well known, the price for possible SALT ratification is a 3-to-5 percent increase in real defense expenditures, as well as the accelerated development and deployment of several destabilizing weapons systems, including at least Trident, MX and cruise missile technology. These "compensating steps" to secure greater support have the additional effect of adding to the dangers of war and economic decline over what they would have been had the SALT II arrangement never been negotiated.

In this debate the hidden agenda has become predominant. In the name of counteracting an alleged Soviet threat, which seems nothing more tangible than a shift in the perceptions of White House policy makers and planners, the United States is moving toward the deployment of a group of weapons systems, including Trident, MX and the cruise missile, that can be used in first-strike missions. This kind of weaponry, together with the strategic doctrines and war planning it generates, erodes the nuclear weapons firebreak, encourages Soviet planners to follow suit with neutralizing weapons systems and doctrines of their own and helps convince potential nuclear powers that nuclear weapons are essential instruments of big-time international diplomacy.

In actuality, Soviet military capabilities, now or projected, pose no genuine threat to American security properly conceived. That is, there is no prospect of a militarily usable Soviet advantage at the strategic level. Even if United States land-based missiles were to become in some sense vulnerable after the mid-1980s, sea and air systems would continue to provide an enormous deterrent. It is difficult to envisage a Soviet leader, other than a psychopath (who might provoke war under any geopolitical conditions), provoking World War III because of a conviction that the magnitude of catastrophe would be smaller for the Soviet Union than for its adversary or that it could "recover" more rapidly. These notions, now popular among anti-SALT hawks, seem farfetched and misleading. It is true that the failures of Soviet leadership, especially the failure to satisfy their own citizenry, could engender Soviet military adventurism as a way out. But to escalate the arms race on our side at this stage will only foster a militarist frame of mind in Moscow.

Fortunately, leaders (and their supportive bureaucracies) in both superpowers have so far demonstrated a consistent resolve, especially after the scare produced by the Cuban missile crisis of 1962, to avoid crisis confrontations that could potentially escalate. There is no plausible "win" scenario for either side in a general nuclear war, even assuming, which is not at all assured, the ecological resilience of the biosphere.

More important, perhaps, the political developments that have occurred since the American defeat in Indochina are completely unrelated to any shift in the ratio of East-West resolve or capabilities, much less a reflection of a deteriorating American strategic position relative to the Soviet Union.

DRAWINGS BY PETER STEINER

Starting with the long period of involvement in Indochina, the overwhelming recent lesson of geopolitics is the inefficacy of military intervention as a way of guiding the political, social and economic destinies of Third World countries. How could a larger American strategic investment in the last decade have altered the outcomes in Iran, Nicaragua or a series of African countries? It is sheer fantasy to suppose that these outcomes were achieved because of any Soviet interventionist role or that they could have been prevented by timely U.S. intervention, much less that these political developments were influenced by the ratio of strategic strength or resolve of the superpowers. A government that provokes its people, or a substantial fraction thereof, to revolutionary opposition can rarely be saved by outside military intervention. After more than $150 billion spent and over 55,000 lives lost to reverse the political tide in Indochina, it should be obvious that the United States cannot hope to control the flow of revolutionary nationalism in the Third World. And can it be responsibly maintained that the Shah or Somoza were defeated because they lacked the military wherewithal to withstand internal challenge? The point is that overwhelming military capabilities cannot necessarily assure stability where a government is oppressive and unresponsive to the needs of the people.

And besides, to impose a political solution by military means, as the Soviet Union did through its Czech intervention in 1968, contradicts American ideals so fundamentally that serious divisions at home arise; domestic turbulence is bound to ensue, straining the democratic process itself. We are not generally a repressive society and cannot comfortably go beyond a certain point in supporting repressive solutions for the unresolved conflicts of a foreign society. In essence, we are inhibited to some degree by our ideals pro-

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claiming the right of a people to determine its own political destiny. Indeed, it is this inhibition that partially explains our reliance at times on covert operations to thwart revolutionary nationalism.

Aside from the special case of Eastern Europe, the Soviet Union has also not fared well with its military excursions in the Third World. This record of failure is surprising considering the consistent Soviet anti-colonial stand and its "clean hands" (with respect to vested economic interests) in the countries of Asia, Africa and Latin America. Yet, in fact, Soviet military involvements in Indonesia, Ghana, Egypt and Somalia all backfired, and one wonders how long the Soviet presence in Cuba and Vietnam would last if American pressure on these countries was removed. Third World nationalist governments are not willing to compromise their independence by ceding significant influence to outsiders, especially to a clumsy superpower.

Cuban experience in Africa is still quite new and difficult to interpret. In a sense, aside from Cuba's being a Third World country and closely aligned, if not subordinate, to the Soviet Union in its foreign policy, there is nothing very unusual about having an outside country send troops to assist the recognized government in response to an invitation to do so. The role of Cuban forces in such countries as Ethiopia and Angola is fully consistent with the rules of the international game on such matters. The impact may be "interventionary," but it is difficult to claim that the Cuban presence is a departure from consistent geopolitical practice by the United States (e.g., it was the basis of the American military presence in Indochina). Many African governments have availed themselves of this sovereign right. There are French troops in several African countries. Why the obsession with Cuba's African presence while France's constabulary role in Africa is virtually ignored? This one-sided view suggests that we are becoming unduly agitated by the direction of international political developments. This agitation feeds the current mood of anxiety about the sufficiency of American resolve in world politics and helps build a national determination to reinforce that resolve by augmenting our military capabilities. At best, such a logic leads to the acquisition of superfluous weaponry; at worst, it leads toward a militarist foreign policy, a revival in some new form for the 1980s of the kind of counterinsurgency thinking that was so popular in the 1960s. The earmarking by the Pentagon of a contingency strike force of 100,000 combat troops for action in the Persian Gulf region is an alarming indication that these fears are not misplaced.

It is essential that our leaders in Congress and the White House deal more forthrightly with the limits of interventionist diplomacy in our time. As matters now stand, the false debate about how to meet the challenge of Soviet expansionism is helping to create a dangerous political climate in which the public will expect its elected leaders to "do something" to arrest the perceived decline in U.S. power on the global stage—most likely by deploying force. As I have argued, such a posture is likely to make matters worse. It is as if with present weather technology we built a public expectation that hurricanes could, and hence, should be neutralized before they caused damage. Revolutionary nationalism, mobilized above a certain threshold, amounts to a political hurricane—it can be observed and accommodated, but it cannot be stopped.

The bearing of these considerations on the SALT debate should be obvious. The buildup of weaponry does nothing to enhance the capacity of the United States to assure the resources or markets needed to maintain the health of the American political economy. In fact, it aggravates the situation by increasing inflationary public spending in the defense sector, an area of investment that does virtually nothing to restore the productivity of the economy; the defense budget does not make American goods any more competitive with those produced by other countries. The decline in the relative productivity of the American economy is a far more serious threat to the stability of the East-West balance than is the relative increase in Soviet military capabilities, and the decline of the value of the dollar is a far worse threat to "the American way of life" than is the menace of Soviet military power.

A careful study of how major international conflicts have arisen in the past tells us that the same tendencies that led to them are re-emerging on the international scene; more specifically, tendencies that produced the sort of international climate out of which World Wars I and II emerged. If I am correct in thinking that in the present climate the risk of World War III is higher than at any time since 1945, then our first priority should be to analyze the situation and take steps to avoid this terrifying calamity. It is my further conviction that a realistic response to the experience of American decline as a world power could arrest, if not reverse, the decline and, at the same time, prevent it from becoming the trigger for global warfare or domestic discontent.

To clarify this contention let me briefly give some reasons why I think we are heading into the 1980s in such a dangerously inappropriate frame of mind. In essence, the prospect of continuing *relative decline* in Western economic, political and cultural leadership, accompanied by low rates of growth in an inflationary environment, tends to produce protectionist pressures and neo-mercantilist policies. In these circumstances, the declining side is always vulnerable, especially if militarily powerful, to the illusion of "a military fix," and its leaders and citizenry can easily become convinced that the protection of national interests requires high-risk or desperate strategies. Japan's launching of World War II can be largely understood in these terms.

A part of the American difficulty involves the misreading of decline; primarily, it is here, not out there. What exists within our society can be overcome; what is external is difficult, if not impossible, to control. Therefore, rebuilding our security requires some difficult, yet liberating, economic and, possibly, ethical adjustments well within our national capacity. I am thinking of conservation, collapse of sunset industries, stimulation of productive enterprise and the like. The longer these adjustments are deferred, the harder they will be to make. I find the SALT II debate partly

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disturbing because it reveals a bipartisan unwillingness to comprehend the true threat to American security. This leads to policies that will only make the situation worse.

Instead of the present elaborately sophisticated analyses of the comparative weapons systems and war-fighting prospects of the United States and the Soviet Union, we urgently need a crash program to formulate alternate security options, including workable programs for disarmament and supranational peace-keeping. These ideas sound more unrealistic than "deterrence" only because we are trapped in a monolithic consensus that has not been challenged in a serious way by contrary positions.

Yet, it can be asked, why should the United States contemplate such alternatives when the Soviet Union fails to do so? The reason to consider these alternatives is, in the first instance, because we should spare no effort to minimize the risks of general war or of our own economic collapse. Certainly these risks are associated with the present drift of events in the world and there is no good reason for our failure to discover whether any way out exists.

And can we be so confident that the Soviet leadership would be unresponsive? The Soviet Union has in recent years consistently proposed matching defense spending cuts on a percentage basis, as well as a moratorium on the development of new weapons systems. We have neither seriously responded to, nor proposed comparable, alternatives. For years now, the United States Arms Control and Disarmament Agency has acted as if disarmament was not part of its name (or mandate). An acute bureaucratic fear prevents even the contemplation of new forms of security adapted to a nuclear age. This fear is a handicap of momentous consequence, undermining our long-term security in a most critical manner.

This assessment of the challenges facing the United States suggests several broad conclusions: (*1*) The Soviet military buildup should not be perceived as a threat to American security. (*2*) Exaggerating the Soviet threat undermines American security by increasing the risks of military adventurism, general warfare and economic collapse. (*3*) Strengthening American security at this time depends primarily on reducing the risks of nuclear war and restoring confidence in the viability of the American economy and life style.

In light of this line of analysis, the approval or rejection of the SALT II treaty is mainly a matter of symbolic consequence. In my judgment, the symbolic value of approval seems less adverse than does rejection. Unfortunately, the way the debate has been structured insures that either outcome will give considerable aid and comfort to militarist interpretations of the security challenges facing the United States. Nevertheless, on balance, the pro-treaty outcome seems less damaging, primarily because it keeps the framework of détente intact and does not aggravate the strains between the United States and its Western European allies. Yet, for reasons I have earlier suggested, ratification of the treaty, even if it comes, will hardly provide an occasion for celebration. □

CARTER GETS A SUPERLAWYER

Lloyd Cutler – Portrait of a Corporate Liberal

Earlier this month Lloyd Cutler—a well-known Washington superlawyer, a quintessential member of the establishment that candidate Jimmy Carter railed against—began work as counsel to the President, one of the senior staff in the White House. He replaced Robert Lipshutz, who exited the city as quietly as he served in it. But few who know Lloyd Cutler expect similar reticence and ineffectuality. One does not reduce his income by 80 percent and lose the prestigious opportunity to counsel the auto, drug, steel, television and railroad industries in order to draft Law Day speeches.

We were somewhat taken aback when, in an interview that appeared in Newsday, *President Carter appeared to be unaware of the extensive services his new counsel has rendered to some of the nation's largest corporations. The President theorized that Cutler was probably just carrying out assignments handed him by his law firm. Obviously, the White House personnel department fouled up or Cutler forgot to send along his resumé. To rectify the gap in the President's knowledge we reprint the following account of Cutler's career excerpted from* The Unseen Power of Washington Lawyers *by Mark Green (Viking/Grossman), which was first published in 1975 and revised in 1978.*

—The Editors

MARK GREEN

To his admirers he is the model of the modern lawyer, but his critics would sentence him to the eclectic chair. He represents the American drug industry *and* the Lawyers Committee for Civil Rights Under Law, counsels the violence-prone automobile industry *and* the President's Commission on Violence, innovates in the civil liberties area *and* belongs to the discriminatory Metropolitan and Kenwood clubs, and advocates a Justice Department more independent of outside pressures while he occasionally lobbies it into submission.

"Lloyd Cutler is a strange man," said Joe Laitin, who has worked closely with Cutler and has been an official in the Office of Management and Budget: "On the one hand he's a corporate devil and on the other hand he's a 1930s

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liberal." Ben Gordon, staff assistant on the Senate Small Business Committee, says flatly that "when I see Lloyd Cutler representing anybody, I know that it is not in the public interest." Yet public-interest lawyer Charles Halpern respects Cutler because "he does as much free work as any lawyer in town." Perhaps more than any other Washington lawyer, Cutler seems to epitomize that dilemma of the corporate liberal—a progressive promoting conservative causes who can very suddenly reverse roles to do good works. He moves with the deftness of a chameleon between the board rooms of corporate power and the anterooms of advocacy groups, as each comes to accept him as one of them.

The leading influence in the Washington law firm of Wilmer, Cutler & Pickering, Cutler [now 61] spends the bulk of his professional life representing companies such as General Motors, I.B.M., CBS and Kaiser Industries. Ideologically Cutler sees himself as a liberal Democrat because, he says, "I am left of center and am a believer in social change." He is a committed civil libertarian—proposing, during the McCarthy years, a system of civil-damage suits against those giving intentionally false testimony against individuals, recommending in 1972 to then Treasury Secretary John Connally a citizens' review board to watchdog the Federal Bureau of Investigation, and recently representing a newsmen's group protesting the way American Telephone and Telegraph was turning over phone records to snooping prosecutors. At the same time, Cutler appears a strong believer in the business sector, telling author David Ignatius: "Business ethics among big firms, like I.B.M., etc., are very high—both in terms of personal ethics and corporate decisions. Most of the companies that have been around for a long time make a lot of money anyway, and have no need to cut corners. . . . Outside counsel and directors exert a great deal of ethical influence." This is a frequent leitmotif—Cutler civilizing his clients. He once described chief executives as people "who retire four years later and then a whole new generation of men from the engine plant must be trained about public affairs." Trained by Cutler.

Lawyering at this interface of business and government, Cutler has developed a canny ability for negotiating the differences between these two sectors of society—which is why he is often called into the later stages of an antitrust case or a delicate Congressional hearing. Just as he has tried to combine in himself the conflicting roles of private-interest and public-interest advocacy, so he seeks to harmonize conflicts between others. His negotiating talent, report colleagues, clients and opponents alike, is largely based on his personal ability to sound so *reasonable*, so *plausible*. Except for an occasional lapse into temper, there are no histrionic gestures, no big expensive cigars, no hearty Rotarian hellos. Cutler rather speaks in the well-modulated and crafted phrases familiar to the veteran diplomat or lawyer: "it is not unreasonable that," "to the extent that," "on the other hand"—phrases that always cushion carefully selected and favorable facts. Sentences and paragraphs glide out of him logically and apparently effortlessly. He is quick to spot any slight flaw in an opponent's argument, and then march his own arguments through that opening no matter how tight the squeeze. When all this is combined with a knack to generously concede small bits of perimeter territory (foreign corporate payoffs are deplorable) while his major points remain an unassailable fortress (we shouldn't legislatively outlaw such payoffs), Cutler gently pulls adversaries along to places they did not intend to go. Lyndon Johnson would understand the style. His national security adviser, Walt Rostow, also had that ability to calmly, resonantly, confidently weave certain facts into a very believable tapestry. . . .

In the area of drug advocacy, especially, Washington lawyers have an obvious impact on all consumers as well as on specific clients. To the extent that lawyers shape policy, they help determine which drugs enter our bodies and which do not. "Potential victims, far away from any policy judgment, are faceless," commented Dr. Robert McCleery, former special assistant to Food and Drug Administration Commissioner James Goddard, "but the immediate losers are closer at hand—in your inner lobby. They are the sleek, suave, sophisticated, stripe-tied, sympathetic, sensitive representatives of business. . . . And they are reasonable men with reasonable suggestions."

One of these reasonable men is Lloyd Cutler. Whether as witness or negotiator or litigator, Cutler represents the Pharmaceutical Manufacturers Association—the industry's trade association, with 135 member firms and a $4.4 million budget—for fees reportedly up to $100,000 in a single year.

Cutler is often called upon to help the drug industry in Congressional testimony—an event which can be either as prearranged as the thousandth running of a Broadway play or as dramatic as the most contentious cross-examination. The Senate Small Business Committee's continuing hearing on drugs at times approached the latter level during its forays into the pricing and advertising practices of the drug

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industry. During the 1967 hearings Senator Gaylord Nelson of Wisconsin—so bothersome a drug opponent that the industry spent upward of $90,000 in an unsuccessful effort to unseat him in 1968—was pitted against Dr. Leslie Lueck, the director of quality control for Parke, Davis and Company, and against Lloyd Cutler, his lawyer.

Cutler prepared his witnesses before they took the stand and interrupted them when he sensed trouble. He fulfilled his life-preserver function during the testimony of the P.M.A.'s economic experts, four academics hired for a total of $34,000 to argue why drug prices were so high.

Cutler's performance was smooth and impressive, leading him later to assure his pharmaceutical clients, in the privacy of a Senate office building elevator, that "we really showed them today." All chuckled. Yet all was not smoothness at the hearings. Cutler again found himself increasingly intervening between client and committee as a well-versed staff pressed his witnesses. After one questioner challenged his assumption that recent lower prices indicated a competitive industry (rather than one formerly afflicted with monopoly profits), Cutler exploded:

> Mr. Cutler: You have convinced me, if I needed any convincing, that no fact presented can make an impression on this committee.
> Senator Nelson: Just a minute. . . .
> Mr. Cutler: I am sorry, Mr. Chairman, I withdraw that remark.

Then came the chloromycetin controversy. The drug was effective for most prescribed infections but also carried a high risk of death for certain users. Based on statistics from the California State Department of Public Health, Morton Mintz, *Washington Post* reporter on consumer and drug affairs, estimated that some 666 users of chloromycetin died in the 1950s. Dr. Albe Watkins testified how he gave his own 10-year-old son chloromycetin after being assured of its safety. The child died within two weeks, both from unstoppable bleeding and the gradually disintegrating effects of gangrene. In a letter to the company, Dr. Watkins said, "I might have done better had I taken a gun and shot him—at least he wouldn't have suffered."

Because of such tragedies—not to mention the passage of the 1962 law encouraging more candid advertising and labeling—Dr. Lueck of Parke, Davis admitted that he would not run ads that lacked adequate warnings; he acknowledged that he believed the present advertising requirements were justifiable. Senator Nelson then suddenly produced an advertisement appearing in a British monthly journal, *The Lancet*, which promoted chloromycetin *without* indicating the side effects. Although the then current American advertisement for this drug contained about 1,300 words of caution and warnings—included because of F.D.A. compulsion—the British ad contained not a word of warning. Ironically, both ads appeared in one publication, *The Lancet*, which had an American edition as well as an English edition.

Murmuring swept through the interested audience. "No warning at all in that ad. How do you explain that?" asked Senator Nelson. At first unable to reply, Lueck finally stammered that they met "the legal requirements of whatever country we distributed our products in. . . . " Cutler sensed a sinking client. "Mr. Chairman, I think you will find that the point you are developing is true of every ad in this magazine, which is a distinguished magazine of the British Medical Society, and I assume it meets all of what they consider to be appropriate requirements."

Senator Nelson flashed an anger uncharacteristic at Senate hearings:

> Senator Nelson: . . . [This] sure shocks me. What the witness says is we will meet the standards of the country where the drug is sold. That means, of course, there is not a single underdeveloped country in the world that has any defense against the exploitation of their people for profit by an American corporation that does not warn them of the serious, mighty serious, possibly fatal consequences here. . . .
> Mr. Cutler: This is a British Medical Society. The British doctors are sophisticated doctors. Just as sophisticated as the doctors in this country. This meets all their requirements. . . .
> Senator Nelson: Any company, drug company or any other kind of company, that would do that, I would be pleased to indict on moral grounds. Your testimony is that you will meet the standards of the country in which you are advertising, not the standards of safety which the witness has testified is a proper standard, the proper ad which gives this warning that is put in ads in this country. But in countries where the people do not know any better, where the country is not protected by laws, you will tell us that you have no compunction about running an ad that will fool a doctor, as you did in California in 1961.

Nelson went on to describe the travail of Dr. Watkins, concluding, "I should think you people would not be able to sleep."

Cutler complained about Nelson's free-swinging criticism of "a company that brought you some evidence you have been asking for," and he three times repeated his objection that the subcommittee had surprised his witness (and himself) with unexpected questions. Nelson retorted with an open-ended invitation for Cutler to return with the "proper" witnesses, which he never did. The chairman then summarized the day's hearings by turning pointedly to Cutler: "It shocks me that you do not even blush. . . . If this is the standard of ethics by which the industry operates, I tell you, you fellows are in for some sad trouble. I do not think this country will stand for it."

Nelson's assault had clearly unsettled Cutler. One spectator chortled and said: "It was the first time I saw the whites of Lloyd Cutler's eyes. A lawyer like that doesn't like to be embarrassed." A Parke, Davis attorney later recalled that Cutler was upset because "it was one of the only times that *he* was a witness." Worse, Cutler no doubt considered himself an innocent witness. He was a lawyer, for God's sake, not a corporate official. If Colombians did or didn't obtain drugs due to his client, it was not for him to know. When asked, three years after the Nelson exchange, whether Parke, Davis still failed to advertise side effects in Britain or elsewhere as thoroughly as it advertised them in the United States, he answered, "I don't know." But was he not even curious? "Yes," was his one-word reply.

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In 1966 Lloyd Cutler wrote that "American cars—whatever their shortcomings—are among the world's safest . . . the automobile industry has made commendable progress in many aspects of automobile safety." To a reporter in 1969 Cutler said, "There are no more ethical companies in terms of business honesty than Kaiser or General Motors—despite [what critics see as] their social obtuseness."

Lloyd Cutler had done work for the auto industry before 1966. In the mid-1950s, for example, he helped Kaiser Industries arrange to build auto plants in Argentina—a delicate negotiation involving financing by the Agency for International Development and an Argentine tariff monopoly for Kaiser. A decade later he occasionally advised General Motors which local defense lawyers to retain on the many product-liability cases filed against it. But if it is crisis that draws two people even closer together, Lloyd Cutler and General Motors really got to know each other in 1966, the year Detroit had a blowout.

In 1965 Senator Abraham Ribicoff's Executive Reorganization Subcommittee began holding hearings on auto safety, although the auto industry did not seem to share the subcommittee's concern. "If the drivers did everything they should," said Harry F. Barr, a G.M. vice president, "there wouldn't be accidents, would there?" John Bugas, a Ford vice president, later argued before the Senate Commerce Committee that *no* regulation was necessary, since the industry could regulate itself (a view which prompted Senator Maurine Neuberger to reply, "I say, 'Ha-ha' "). These views reflected the corporate hubris of being a (then) $40-billion-a-year industry and the only major transportation industry free of government regulation.

But by early 1966 the industry was backpedaling from Ralph Nader's *Unsafe at Any Speed* and G.M.'s now well-known investigation of Nader. After much of the damage was done, Cutler registered as a lobbyist in April for the Automobile Manufacturers Association (now called the Motor Vehicle Manufacturers Association of the United States). "Lloyd Cutler was hired to pick up the pieces," observed White House adviser Joseph Califano, then deeply involved in the drafting and passage of an auto-safety bill.

The industry obviously needed a face-lift, and Cutler surgically provided it. As with the 1962 Drug Amendments, he and his clients realized that sentiments favored some auto-safety bill; they worked to make it as painless as possible. The Cutler impact was immediately noticeable to Paul Sitton of the Commerce Department, one of the initiators of the legislation: "Suddenly Bugas in the House was saying that he recognized the problems and the need for some legislation. He was really saying, 'We'll love you to death.' At the same time Cutler was meeting with us and saying, 'Let us sit down like reasonable men. . . . The industry are not criminals.' "

Cutler admirers see this performance as an example of the Washington lawyer's "civilizing" his corporate clients. And Cutler—along with Theodore Sorenson of New York's Paul, Weiss, Rifkind, Wharton & Garrison, who specially counseled G.M. president James Roche—did mellow their client's more outrageous posturings. But critics see this talk as simply a more genteel and circuitous route to the same destination: the weakest safety bill possible. "Lloyd would come over every day with new amendments to dilute the bill," said Sitton. "They were consistent, persistent attempts to undo the public purpose of the act." Paul Halpern, a political scientist writing a book about these events, said that "the A.M.A. and Cutler told the press that they favored a bill when, in fact, they were trying to undermine it."

Wilmer, Cutler & Pickering is representing Ford against the Department of Transportation's (D.O.T.) proposals for the installation of "air bags." Air bags inflate to the size of two pillows four one-hundredths of a second after a car accident and form a protective cushion between motorists and the steering assembly, the windshield and the instrument panel. They therefore prevent the "second collision" of driver against car interior, which is when most injuries and deaths occur. The idea is that when a car stops dead, the passengers won't.

In a rare industry division, G.M. favored this approach (in part because it had developed far more experience and know-how about air bags by 1969 than had its competitors), but Ford, Chrysler and American Motors were opposed. Their insistent opposition succeeded in obtaining three D.O.T. delays in the proposed date of implementation. And in May 1971 they (but not G.M.) filed suit. Representing Ford were both Cutler and John Pickering, as well as two firm associates and a Cincinnati law firm. Their brief argued that air bags were less protective than seat belts, had been faultily tested, and were beyond the authority of the agency.

The case was argued on April 20, 1972, before the Court of Appeals for the Sixth Circuit in a typical public interest/private interest battle. Lowell Dodge, then head of the Center for Auto Safety, described the scene: "The court was divided into two halves, one for the government and one for industry. I wish I had a photograph to display the difference. There were two inexperienced and nervous government lawyers against easily twenty industry lawyers, with Cutler in the middle." Pickering made Ford's oral presentation (after furious bartering with the other plaintiffs, he got thirty-nine of the sixty available minutes). It was Cutler, however, who sat at the defense team's nerve center—listening, taking notes, passing on notes, tête-à-têting with Pickering, coordinating all troops, a legal general behind the front lines.

Few battles are conclusively decisive, and neither was this one. Like a judicious Solomon, the court agreed with Ford, Chrysler and American Motors that the National Highway Traffic Safety Administration's test dummies, and hence tests, had been "unobjective"; therefore it delayed any standard until new tests were run. But, on the other hand, the decision stated that the agency *did* have the authority to require the installation of such new technology.

Although they lost this key contention, the U.S. (and foreign) auto men did secure a delay in the date of air bag installation. The industry had put off for a fourth time the final deadline for air bags. [As of now air bags will not be installed in all new cars until 1984.—*The Editors*]

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All this delay, of course, had a deadly cost, best understood by a simple though persuasive syllogism: real world crashes of experimental cars with air bags showed that some drivers would have been killed if their cars had lacked air bags; these delays, then, effectively prevent millions of passengers from gaining the benefits of air bags; therefore, thousands of people will needlessly die in auto crashes. The Department of Transportation estimated in August 1974 that equipping all cars with air bags would save 15,600 lives a year and result in one million fewer injuries.

Industry objection to air bags fits easily into a long tradition: when a health or safety breakthrough threatens industry investment and planning, it is opposed. It is as predictable as a law of physics: shatterproof windshield glass, functional bumpers, seat belts, antipollution exhaust devices and air bags were all initially fought by the auto makers. And leading the battle against the last two devices was Lloyd Cutler, who in the executive, Congressional and judicial branches of government exploited his considerable talents to avoid or delay these life-saving advances. Lawyers in such circumstances often escape culpability for the societal consequences of their acts by pointing out that they were merely following client orders. Cutler, however, cannot and does not use this rationale. Rather, he argues that if air bags were prematurely installed in 1974 models, and they misfired, it would generate consumer hostility. Like many arguments, this one appears plausible; it is not for nothing that Lloyd Cutler earns more than $250,000 annually. But his argument is unpersuasive because even G.M. had decided the air bag was workable, and in 1972 was planning to offer 50,000 new cars with air bags beginning in the fall of 1973.

What is good enough for G.M. engineering should be good enough for Cutler. But he supported instead a client (Ford) who didn't believe in air bags, even though his other client (G.M.) did. As Lloyd Cutler once said with firmness in an interview, "Listen, Mr. Green. There is one point I want to make clear: we believe in the arguments that we make." □

Inside the I.R.A.

JACK HOLLAND

The visit to Ireland by Pope John Paul II produced a genuine outpouring of sentiment from millions of Irish who supported his message of peace—and a statement by an Irish Republican Army spokesman that his group would keep fighting. The British dispatched a retired spymaster (the putative model for James Bond's boss, "M") to coordinate anti-I.R.A. activities of the British Army and the Royal Ulster Constabulary. In other words, business as usual, both sides were saying; the war will go on. American perceptions of Ireland and the current crisis with Britain have generally been simplistic, but never more so than when dealing with the Irish guerrilla groups that stubbornly fight on.

Jack Holland, a journalist from Belfast, is working as a freelance writer in New York City.

Most Americans don't know that there are three distinct Irish nationalist guerrilla groups currently based in Northern Ireland. Two of them, the Provisional I.R.A (P.I.R.A.) and the Official I.R.A. (O.I.R.A.), were formed when the Irish Republican Army split in late 1969, mainly over the issue of policy toward the Northern Ireland state. Those who founded O.I.R.A. were ideologically dominated by the Irish Communist Party, then very much an old-fashioned 1930s-style Stalinist party with strong links to Moscow. O.I.R.A. was pressing for gradual recognition of Northern Ireland's right to exist, and an abandonment of armed struggle as a means of political change. (Contrary to what we might expect, it was Moscow's influence, through the Irish Communist Party, that encouraged this trend away from terrorist violence.) Members of P.I.R.A.—who gradually became known simply as the Provisionals or Provies—believed that the time had come to launch a military campaign against Northern Ireland and the British Army with the objective of destroying the state and driving the British out. The Provisionals have been responsible for most of the violence of the last nine years or so, including the killing of Earl Mountbatten of Burma, his three companions and eighteen British soldiers on a single day last August.

The third and most recent arrival on the scene was an outgrowth of a split within the Official I.R.A. that was really a reprise of the 1969 schism in the I.R.A. Many activists had stayed with O.I.R.A. because they believed that it was more "left-wing" than P.I.R.A.; they wanted to join working-class political issues with Irish nationalism. By 1974, however, they had become disillusioned with the political drift of their organization's growing emphasis on parliamentary politics and running its members in local government elections. There was also a strong faction within O.I.R.A. that wanted to resume the campaign of violence the leadership had suspended in 1972. In late 1974, these dissidents formed the Irish National Liberation Army (I.N.L.A.).

Though small—numbering no more than 100 activists—I.N.L.A. gave the British security forces fits earlier this year when it penetrated the garage of the Houses of Parliament and planted a bomb in the car of Airey Neave, a trusted adviser to Prime Minister Margaret Thatcher. Neave was killed in the explosion. Since 1975, it has hit the British Army and the Royal Ulster Constabulary with sustained terrorism, causing many deaths. Its goal is a socialist state, and it regards itself as the only pure Marxist organization among the Irish guerrilla groups. Its left-wing politics have alienated Irish-Americans, who are traditionally Irish-Nationalist, so it has had to turn to Europe and the Middle East for money and guns. Recently two men whom British police believe are associated with I.N.L.A. were arrested driving a van loaded with arms across the Greece-Turkey border. The British believe the weapons were acquired from the Palestine Liberation Organization. Sources close to I.N.L.A. claim that it has just equipped itself with a shipment of Uzi sub-

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machine guns—Israeli-made fully automatic weapons—also believed to have been acquired in the Middle East.

The Provisionals are still by far the largest of the three paramilitary groups. In Northern Ireland alone, the British Army estimates that at least 500 full-time, well-armed terrorists belong to P.I.R.A. As the only nation in Western Europe that has been a colony for a prolonged time, Ireland has spawned broadly based nationalist movements throughout its history—liberation fronts like those in the Third World today, which have embraced a wide political spectrum. As part of that tradition, P.I.R.A. has more in common with African guerrilla movements than with groups like the Baader-Meinhof gang. It is not made up of middle-class, disenchanted university drop-outs but mostly of working-class slum kids and poor farmers. In common with Third World movements, P.I.R.A. has occasionally adopted the rhetoric of Marxism, for that seems to be the ideology twentieth-century nationalist movements find most congenial in colonial situations. It is a Marxism that coexists with the traditional Irish Catholicism of many P.I.R.A. members.

At present, the Provisionals' base is in the working-class ghettos of Belfast's minority Catholic population. It was from these areas that the Provisionals recruited most of their membership after the I.R.A. split in late 1969, and it is there, the British quite correctly believe, that the war against the terrorists will be won or lost. A Belfast man currently dominates P.I.R.A.'s so-called Northern Command—the level of organization directly responsible for running the campaign of violence in Northern Ireland. He has been largely responsible for organizing the movement into cells—about forty in all—which the Provisionals call Active Service Units (A.S.U.). The A.S.U.s are the front-line troops in the war against the British—and anyone else the leadership decides is a "legitimate target." About a quarter of the A.S.U.s are believed to be based in Belfast, and the rest are scattered over the rural and border areas. The increasing reliance on cell structure has changed the nature of P.I.R.A. to a certain extent; formerly, it was organized on a neighborhood "company" basis, and local people would know the P.I.R.A. members in their area. People resorted to them frequently as a kind of police force. But increased British pressure made greater secrecy necessary. This in turn has meant that the guerrillas' ties with the people have atrophied.

Above the Northern Command stands the Provisional Army Council, which is based in Dublin. Its seven members are linked directly to Provisional Sinn Fein, the political wing of the movement. (Sinn Fein is the weakest link of the guerrilla organization, and commands little political support; it is considered totally subordinate to the military.) The Army Council decides overall military and political strategy. Its members are elected by general meetings of the Provisional Army, but these are now rarely held. One council member is appointed chief of staff. When P.I.R.A. was formed, the chief of staff's authority was near-absolute. But it has diminished, and now the chief of staff can only make decisions with the support of a majority of the seven-member council.

COMING UP

Beginning in next week's issue, *The Nation* will publish the views of Israelis outside the Government on reaching accommodation with the Palestinians.

The Provisionals' General Headquarters in Dublin is responsible for supplying the A.S.U.s in Northern Ireland. Both the Army Council and the GHQ are dominated by veterans who began their careers as terrorists in the 1940s and 1950s with the old I.R.A. Their function is a crucial one: their connections now spread from the United States—where most of the army's weapons come from—to the Middle East, where P.I.R.A. is believed to have close ties with the P.L.O. (Though Yasir Arafat recently denied—in qualified terms—any connection with the Provisionals, there is substantial evidence to suggest otherwise. In an interview in *The Irish Times* in 1978, two P.L.O. officers admitted that the Provisionals had visited a P.L.O. training camp in South Lebanon. Irish police believe that a large arms shipment seized in Dublin the same year originated in the Middle East. A Provisional spokesman expressed "solidarity with the P.L.O. in liberating the entire occupied area of Palestine," in a 1978 interview in a Dublin magazine.)

In a secret British Army Intelligence document on Irish terrorists, the British themselves admitted that, "Armed robbery within Ireland is almost certainly the greatest source of income for P.I.R.A." They estimated that robberies bring in about $1 million a year, compared with total overseas contributions of $250,000. Of that, they believe that $100,000 or more comes from Northern Irish Aid in the United States (though they speculate that "actual remit-

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tances" from the United States might be much higher). Most of this U.S. money goes to the families of imprisoned terrorists. There is no evidence that it is used to buy arms.

The document from which these figures are quoted fell into the hands of P.I.R.A. earlier this year, and they leaked it to the Irish press. The story proved severely embarrassing to the British Government, for it reported in detail the British Army's reasons for believing that the guerrillas in Northern Ireland could keep going for at least another five years—and probably longer: "The Provisional I.R.A. has the dedication and sinews of war to raise violence intermittently to at least the level of early 1978, certainly for the foreseeable future. Even if 'peace' is restored, the motivation for politically inspired violence will remain. Arms will be readily available and there will be many who are willing and able to use them. Any peace will be superficial and brittle. A new campaign may well erupt in the years ahead." The document went on to enunciate this chilling conclusion: "We see no prospect in the next five years of any political change which would remove P.I.R.A.'s raison d'être."

The Provisionals' "Tet offensive" of last August would seem to justify the pessimism of the British Army document. It is a war the British Army cannot win. The search for a military solution is futile. Increased military repression will not stabilize an inherently unstable state like Northern Ireland, but only increase its instability. If the Conservative Government acted on the conclusions in the document drawn up by their own generals, they would declare their intention to withdraw from the Irish situation altogether. What keeps them there is their fear of a civil war sparked off by Protestant terrorist reaction to such a development. Northern Ireland was created in the first place to placate the Protestants, and it is the Protestants that the British will have to confront if they desire a long-term solution to an age-old problem. □

Spenkelink

(Continued From Front Cover)

the prison and another at mid-afternoon with Lois Spenkelink, John's mother, who brought what proved to be his last public statement, I had returned to town. I spent thirty minutes trying to place a telephone call and five reading the local paper. We ate a late lunch; then, to burn off energy while waiting for the all-night vigil, I took a walk through town and around the courthouse. As I crossed a filling-station apron on the main street, a young man ran up and said I had an emergency call at the motel. It was from Margie Pitts Hames, an Atlanta lawyer who is a friend and colleague in the A.C.L.U. It was 5:30 P.M.

Phones at the motel were tied up by the press. Circuits out of the small town of Starke were busy. After a few minutes we were able to place a call from the filling station and reached Margie in Tallahassee. She told me she had just talked to Millard Farmer, a Georgia lawyer who heads a comprehensive litigation effort in death cases called Team Defense. Millard first studied the notes of a skilled appeals lawyer who had analyzed the trial transcript carefully. This lawyer argued persuasively that the defense attorneys were ineffective. Reviewing the trial records himself, Millard was convinced that Spenkelink had been denied his Sixth Amendment right to the effective assistance of counsel. He had been formally authorized by John Spenkelink to enter his case earlier that day.

Margie had reviewed what Millard found, looked at parts of the trial record herself and agreed. She augmented Millard's work with her own findings and ideas and helped draft an original petition for a writ of *habeas corpus* raising the single question of effective counsel. Margie asked me to listen while she read the pleading; if I found it had merit, I was to fly to Atlanta and join them in presenting it to Judge Elbert P. Tuttle, a senior judge on the United States Court of Appeals for the Fifth Circuit.

She began a litany of allegations familiar to all who have followed capital trials in the United States these last years. John Spenkelink's trial attorneys were court-appointed. They lacked sufficient resources to prepare and conduct the defense. One publicly stated that the case was beyond his competence. One was absent during part of the jury selection to be with his wife in childbirth. He had not sought a delay in the proceeding or permission of the court to be absent.

Spenkelink's lawyers also failed to challenge the composition of the grand and petit juries. Both were later found to underrepresent blacks, women and young people—groups considered by most experienced attorneys to be favorable to the defense in capital cases. The lawyers failed to ask that Spenkelink be tried separately from his co-defendant who was acquitted. Severance was authorized under Florida law and would seem strategically important. Counsel failed to challenge excessive security measures in the courtroom, which are generally thought to be prejudicial to a defendant. After reading the record, Millard Farmer believed the defense lawyers were too poorly informed on the rules of evidence and procedure in capital cases to conduct an effective defense. They had informed the jury in their closing argument that the judge could not impose a more severe sentence than the jury recommended. This may have encouraged the jury to ask for a maximum sentence, leaving the judge the full range of punishment alternatives. Counsel failed to obtain a transcript of questions asked prospective jurors, which was necessary in determining if they were constitutionally selected. The Florida Supreme Court ruled that all objections had been waived. With their client facing death, counsel did not request oral argument on appeal in the Supreme Court of Florida.

Next, Margie sketched in a background of John Spenkelink that convinced me he had not been adequately defended. With his strange foreign-sounding name, style, voice, appearance, a long criminal record, he had testified without

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any preparation or advice on how what he said might affect a jury. From years in prison, homosexuality and homosexual rape were something he could describe as naturally as jurors would a Sunday School picnic. A jury in Leon County, Florida, might find him guilty on his appearance and testimony alone.

Then came what was for me the clincher. Spenkelink's father was a paratrooper in World War II. He jumped with the 82nd Airborne Division. When it was nearly wiped out, he was transferred to the 101st. He fought in the Battle of the Bulge. The war weighed heavily on him. Life wasn't easy thereafter. To his son he was a hero.

One day, when John was 11, his father went into the garage, attached a hose to the car exhaust, started the motor, put the hose in his mouth and asphyxiated himself. John found his father dead on the garage floor with the hose in his mouth. The troubled youngster began a career of minor crime. Prison psychiatrists examining him over the years wrote that his criminal behavior was in large part due to the suicide of his father and that he was amenable to treatment. Incredibly, when the sentencing phase of the case was tried, these facts were not presented to mitigate the punishment. A jury would not give a death penalty in the face of such evidence. John Spenkelink was a second-generation casualty of World War II.

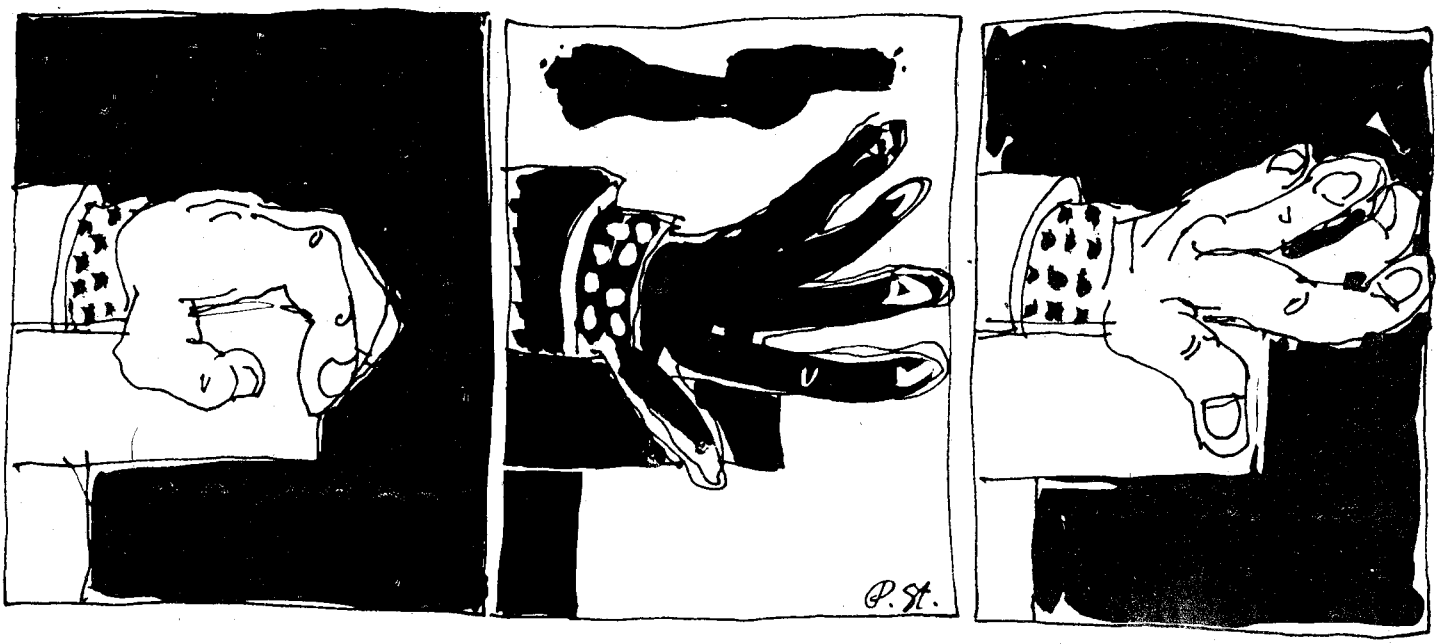
My own experience with capital cases, familiarity with the records of many other cases, and years spent working with the problems of obtaining lawyers to represent poor people accused of crime have taught me that the overwhelming majority of those on death row did not have effective assistance of counsel. Most were represented by court-appointed lawyers or public defenders. Few of these lawyers had much experience. All met with hatred from the community, the police and even the judiciary. They had no adequate resources to investigate and present a full defense. Their access to psychiatric and other professional services was severely limited. Many were afraid of their clients and unable to communicate meaningfully with them. Often they were so traumatized by the forces arrayed against them that they didn't press obvious points like fair jury selection, discovery of the prosecution case, insistence on public funds for investigation, or vigorously argue every issue.

Criminal defense counsel are usually young—conscientious and more courageous than the bar generally, but also less experienced, often overburdened with cases and usually underpaid and unable to finance the defense themselves. If the Sixth Amendment right to counsel is to have meaning, the question of effective assistance of counsel must be asked and answered constantly.

Lawyers hate to charge other lawyers with having failed to adequately represent a criminal defendant and rarely do. Where the defendant is indigent, it adds insult to injury. In death cases it is especially hard. Are you saying their indifference or incompetence cost a client his life?

Clark told Hames that he would leave immediately for Atlanta. On arriving, he hurried to Millard Farmer's office, where the petition for habeas corpus *was being typed up. By 11 P.M. Farmer, Hames and Clark were on the doorstep of Circuit Judge Elbert Tuttle. Tuttle, whom Clark has long regarded as "a genuine American hero," was for twenty years Chief Judge on the Court of Appeals for the Fifth Circuit during the stormy era of segregation cases, and consistently ruled to enforce constitutional principles in civil rights cases.*

Mrs. Tuttle answered the door, and graciously led us to her living room. As we settled down with Judge Tuttle, she retired. I had not seen him in a decade. Now in his early 80s, Judge Tuttle was as erect, dignified, alert and interested as ever. He knew of course why we were there. He stated at the outset that he was pleased to meet with us, that he would read our petition and hear our plea. But he cautioned us that he had not granted a writ of *habeas corpus* since assuming senior status a dozen years earlier and did not see how he



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could do so now. Then he asked why we had come from Florida to bring a Florida case to him. It was an important question. Forum shopping, as lawyers call it, offends the idea that courts dispense justice uniformly. It implies that judicial favoritism is being sought, an advantage gained by going outside the usual channels. The statute giving Judge Tuttle jurisdiction required an explanation of why the case was not taken to a Federal judge in Florida.

I gave him a hard, straight answer. This case had been in the courts for six years. The Federal district judges in Florida had reviewed it at length time and time again. It had been rejected on other grounds just the day before by the District Court in Florida. The Legal Defense Fund had made prodigious efforts at the District, Appellate and Supreme Court levels.

Now we were eight hours away from an execution and a new and difficult question, never raised in the case, and one courts and lawyers alike abhor, was raised. Did Spenkelink's court-appointed Florida lawyers represent him effectively? There was little chance that judges with six years' involvement behind them would consider this new issue. And then it would be too late to go elsewhere. We needed a very courageous, very independent, open-minded and fair judge. That is why we chose Judge Tuttle. That is what I told him.

Millard Farmer described what he had found reviewing the trial record. Judge Tuttle was quick and to the point with questions. He knew the law and that he had jurisdiction and therefore the duty to decide. His first question was, why did a jury impose the death sentence?

Spenkelink's sentence cried out for explanation. This should not have been a capital case. Prosecutors pay little attention to murder among convicts. When blacks, convicts and other "despised poor" kill one another, our society has not cared so much as it does when "one of them kills one of us." Here there was a claim of self-defense, that the defendant had been homosexually raped and his money taken from him, that he had entered the motel room to recover his money and go his own way. The other man was older, bigger, stronger, had spent decades in prison and was in violation of parole at the time. He heard someone in his room. There was a struggle. He was killed. The death penalty is not normally asked for or given in such cases.

But Leon County, Florida, is special. More than half of all people on death rows in the nation are in three Southern states—Florida, Texas and Georgia. This unequal distribution only begins to suggest the severely limited number of jurisdictions prosecuting capital cases. Most of the more than 300 men in these three states were convicted in a handful of counties in each state. The prejudices of the prosecutors, political ambitions, local idiosyncracies, community attitudes in these counties were the determinants. Had these events occurred in nearly any of America's 3,000 other counties—or even in Leon County at another time—it is very unlikely the prosecutor would have asked for death.

Although I wasn't at the trial, only one explanation seemed an answer to Judge Tuttle's question: The jury hated John Spenkelink. His own testimony must have done it. An outsider with a strange name, a convict, a troublemaker, and finally a life style that deeply offended the jury. A man describing his own rape, homosexual conduct, a life of crime, was scum, not to be believed, who ought to die.

The jury had heard no explanation of how Spenkelink came to be what he was. They didn't know that this man, as a child, had found his hero father dead, a suicide. Didn't know of the instability and pain in the family before the father's death. Didn't know how the child had been affected by finding the father he loved on the garage floor dead by his own hand.

When the story was told, Judge Tuttle did not hesitate. He said he would grant a stay of execution to permit consideration of the petition. He said it quietly, as simply as that. Did we have an order prepared? No, but Millard Farmer quickly wrote one out in longhand on a coffee table in Mrs. Tuttle's living room. While Millard wrote, the judge and I talked. He said he didn't favor abolition of the death penalty in all cases as he knew I did.

At 11:30 P.M. Judge Tuttle signed the order. We rushed to Millard's office in a state of euphoria. It was now after midnight. We encountered difficulty getting a phone call through to either the Governor in Tallahassee or the warden at Raiford. Millard found a pilot who would fly us to Florida, but before he could get the plane ready we had spoken with the authorities, who assured us that the stay would be honored without actual service of the papers. Millard arranged to have copies of our petition and Judge Tuttle's order available for the Attorney General that morning. We were confident that we would have full hearings on the issue of trial counsel's adequacy.

The stay of execution meant Judge Tuttle would either assign the matter to the appropriate district judge, or hear it himself. He wanted to meet with the parties to determine these issues Wednesday afternoon but the Attorney General's office declined. We outlined the issues and evidence for the hearing before I left. We could win this case, I felt. We could be ready for a hearing within weeks. I caught a flight to New York at 7 A.M.

Clark returned to New York, and the next day, Thursday, May 24, tried fruitlessly to reach Florida Attorney General Jim Smith, in order to learn if the State would seek an emergency review of Judge Tuttle's stay. Later, Clark learned that Smith had held a press conference at which he vowed that the execution would take place. Smith then flew to Washington and filed a motion in the U.S. Supreme Court to vacate Judge Tuttle's order. Clark and the other defense lawyers were given no chance to oppose this motion and Clark learned of it only after the results were announced. The Supreme Court, with only one dissent—Justice William Rehnquist—denied the State of Florida's appeal, and the stay held. Justice Rehnquist wrote that his "difficulty undoubtedly stems from six years of litigation." He said continuing appeals could "result in a situation where States are powerless to carry out a death sentence"; he was also critical of the defense's new contention that Spenkelink had not had

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effective counsel. Justice Rehnquist found it hard to believe that the defendant had suddenly determined this after six years of trial: "Either he does not believe the claim himself or he had held the claim in reserve, an insurance policy of sorts, to spring on a Federal judge of his choice if all else fails." Clark's response to this charge is: "To presume that a man whose life is at stake does not believe a claim made in his behalf with no evidence to support the presumption is a cavalier treatment of life and constitutional rights. To presume, as the exclusive alternative, that the claim was deliberately held in reserve as 'an insurance policy of sorts' is contrary to reason and the entire appellate history of the case which was vigorously presented. Mr. Justice Rehnquist decides issues of fact without the evidence when a man's life is at stake."

The State had another card to play. At 7 P.M. on Thursday, as Clark was about to go home, he received a call from the clerk of the U.S. Court of Appeals in New Orleans, who told Clark that he was setting up a conference call between three judges of the Court of Appeals—Judges James P. Coleman, Peter T. Fay and Alvin B. Rubin, who were to rule on a request from the State of Florida that Judge Tuttle's stay of execution be set aside—Florida Attorney General Smith, and Millard Farmer, Margie Hames and Clark. The call began (Judge Fay was unavailable), and the parties wrangled heatedly and inconclusively over technical questions of jurisdiction for an hour.

The telephone conference was a nightmare. We were told at the beginning not to record what was said. The court did not have our papers. We had not seen the State's papers. Some factual statements in the State's papers were in error, but we could not know this until we saw them some days later. We were asked whether we had gone to Spenkelink and urged him to attack his trial lawyers, to which we replied, if so, discipline us, do not kill him without determining his rights. There was loose, unstudied, uninformed discussion about whether Judge Tuttle had jurisdiction, whether he entered a final order, whether the Court of Appeals had power to review his order.

It soon became clear that the bizarre late-night argument over long-distance phone among lawyers and judges who had not seen the papers in the case nor been briefed on the issues was worse than meaningless; it was dangerous. I complained and Judge Coleman replied that he was not legally required to give us the opportunity to discuss the matter over the telephone. We asked for time to file affidavits and a response to the State's motion. The merits of our petition for a writ of *habeas corpus* had been barely discussed. A representative of the Attorney General's office, Margie, Millard and I made some emotional conclusory statements and the call was over shortly after 8 P.M.

I returned home to wait. As the hour grew late, I became worried about how I would get to Washington and the Supreme Court if the Court of Appeals acted that evening. I phoned Judge Coleman, told him it was raining in New York, there could be delays in transportation, the last flights and trains were imminent, and that I must know whether I had to seek action by the Supreme Court. He said he didn't know, they were having trouble agreeing, but he assured me I would have time to obtain review if it became necessary. I replied that Florida could march Spenkelink to the electric chair the minute Judge Tuttle's stay was vacated. He said that as a former Attorney General, he knew this and assured me any order his court might enter would not be effective until I had time to seek review by the Supreme Court.

In view of the extraordinary procedure that had been followed, I had no confidence what this meant. I called Attorney General Smith to urge him to agree to time for briefing the issues before the Fifth Circuit. I told him we had done the court a disservice in the telephone discussion because no one had studied the issues or unusual procedures used. His public duty to fairness required study to be sure justice was done. He said he had been in the room in Tallahassee during the discussion, but decided not to speak. To my request, he answered only, "I couldn't do that."

About 11:50 P.M. the phone rang. It was the clerk of the Court of Appeals calling from New Orleans. He had an order to read. It was a page and a half. It cited four cases that had nothing to do with any issue before the Court of Appeals, and had not been mentioned before. It concluded, "We are convinced, for reasons which will hereafter be stated in a formal opinion, that the aforesaid stay should be vacated."

The order added, "The motions of Spenkelink for time in which to file supporting affidavits, etc., is denied. However, counsel on both sides have been given the benefit of an extensive discussion of the matter by conference telephone with a quorum of the court. Further ordered that this order vacating the stay of execution granted by Judge Tuttle shall become fully and formally effective at the hour of 9:30 o'clock Eastern daylight savings time, Friday, May 25, 1979. . . . Judge Rubin reserves the right to dissent for reasons to be assigned."

When I called Atlanta to tell Millard and Margie of the order, only nine and a half hours remained in which to present the matter to the Supreme Court. As a precaution, William M. Hames, Margie's husband and a senior partner in a distinguished Atlanta firm, had flown to Washington several hours earlier with a draft petition to the Supreme Court. We reworked it over the phone to conform to what we now knew of the actual order. Margie would call the changes to Bill in Washington. I would join him there. He would have the papers ready when I arrived.

The next commercial flight to Washington was at 7:00 A.M. Too late. The next train at 3:30 A.M. was due in Washington at 7:30. Too late. Joel Berger of the Legal Defense Fund helped me call charter flight companies but we could find nothing. So Jack Boger at the Legal Defense Fund picked me up shortly before 2 A.M. and we drove through heavy rain to Washington.

We could only seek a discretionary writ from the Supreme Court. It had denied such writs generally in death penalty cases since 1976. Indeed, although John Spenkelink had tried four times to obtain Supreme Court review, the Court had never considered his case on the merits. The Supreme

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Court had been battered by successive days of debate on a stay for him. On Thursday, it had denied two petitions in his case. It was hard to be optimistic now.

Bill Hames was already in the clerk's office when I arrived shortly after 6 A.M. I read the pleadings, we filed them and then waited for the clerk, Michael Rodak, to arrive.

Rodak came in about 7 A.M. He refused to see me. For more than an hour Court officials would not say whether any Justice was in the building. We were to take it on faith that the Justices would actually see our pleading, a little painful when an execution is possible within hours. The procedure at that stage renders effective assistance of counsel meaningless. How can any lawyer be effective when he cannot know whether the judges receive his papers? The practice results from the Court's excessive desire for secrecy. Eventually, reporters told us who had been seen entering the building. Rodak continued to send word that he was "too busy" to see me. I could not find out whether the Court had notified the State of Florida that it was considering our petition.

Shortly after 10 A.M., I was handed an order. "The application for stay of execution, presented to Mr. Justice Powell and by him referred to the Court, is denied. Mr. Justice Brennan and Mr. Justice Marshall would grant the stay. Mr. Justice Blackmun took no part. . . ." At the bottom of the order were the initials W.E.B., apparently written by the Chief Justice of the United States. I wondered whether they were written larger, smaller, or the same as usual.

John Spenkelink was dead within half an hour. We are told he was denied the chance to make a last statement, verbally abused by the guards, fought removal from his cell, was gagged and forced to the chair. Three successive bolts of electricity were sent through his body. Parts of his body were burned. His fingers curled backward. An investigation of the methods of his execution has been made. There are still those who believe, like Dr. Guillotine, that there is a humane method.

As a lawyer I have no doubt that Judge James P. Coleman, joined by Judge Peter T. Fay, who did not see the papers we filed or hear arguments, violated John Spenkelink's constitutional right to due process of law. There can be only one explanation. Coleman wanted the man executed quickly, regardless of the law. Why the rush to execution? Why would he take the unprecedented action of reviewing the State's petition late at night without requiring it to be submitted first to Judge Tuttle? There is no greater expert on the very issues of jurisdiction the State raised than Elbert Tuttle. He is chairman of the Advisory Committee on Civil Rules and vastly experienced in the subject matter.

The issues raised in the conference call were technical but very important.* Why did Coleman proceed after years of careful, painstaking litigation to compel exhausted lawyers and the court to discuss a life-and-death case late at night, over the phone, without exchanging papers, without giving time for review or study, without allowing time for supporting affidavits? Why did he not wait until Judge Fay could hear the argument? Why did he cite four irrelevant cases never mentioned in the papers or the discussion in an order written at home and dictated over the phone to a clerk?

How could he decide the matter without having facts to judge whether there had been effective assistance of counsel? Since Judge Fay did not hear argument and should not have voted, and because Judge Rubin ultimately dissented, how could he decide to vacate Judge Tuttle's order? And why had he not given his reasons? Judges deciding death cases ought to give reasons.

Having waited several weeks for the formal opinion he had promised, I called the clerk and inquired about it. I was called back and asked to send a letter. I did. No answer. I wrote again. Finally, on July 23, two months after John Spenkelink's execution, the clerk's office wrote "that in review of the action taken by the United States Supreme Court subsequent to that taken by the Court in the stay for Spenkelink, the majority of the panel does not intend to write anything further with reference to this case." Attached was a memo dated July 18 from Judge Rubin. "I reserved the right to dissent from the order issued by the panel in this case, and I now confirm that I do dissent, on procedural grounds, from that action." He too declined to give reasons.

I wrote the court on July 28, asked for reconsideration of the decision not to write an opinion and inquired: "Are we to believe a formal opinion has not been written because a formal opinion which justified the court's action which led immediately to Mr. Spenkelink's execution cannot be written?" There has been no reply. The courts must require a full review of the effectiveness of trial counsel and the adequacy of funds for investigation and expert witnesses in every capital case if Sixth Amendment rights are to be fulfilled. They should initiate procedures now to alleviate a pervasive problem.

Worse than Justice Rehnquist's hostility and Judge Coleman's abuse of power is the direction their petulance over delays takes. Courts may well resent the absurdity of years of appeals with hundreds on death row. It holds the judiciary up to ridicule. But that is no reason to kill a man.

The reason death cases drone on in our courts is that America no longer has the will for capital punishment. If we executed one person each working day it would be years before we would catch up with the backlog. We will not do it. And as the anguish increases it will become clear that equal protection of the laws is not possible with the death penalty. We will not even afford the accused, nearly always impoverished, the price of an adequate defense. It will be the capricious cases, Gary Gilmore with a desire to die, John Spenkelink denied due process, that result in death.

Eventually we will declare capital punishment unconstitutional. Someday we may even proclaim life the first human right. □

*Judge Coleman based jurisdiction on an appellate rule even though no appeal had been taken, so the case was not even properly before his court. He ignored the *habeas corpus* statute, which denies the Court of Appeals jurisdiction over original petitions for *habeas corpus*. He considered a stay order a "final order" in violation of a statute that required a certificate of probable cause—a stay order that was clearly made in order to preserve jurisdiction.

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BOOKS & THE ARTS.

You Aren't Lost Until You Don't Know Where You've Been

WILLIAM APPLEMAN WILLIAMS

AMERICA REVISED: History Schoolbooks in the Twentieth Century. *By Frances FitzGerald. Atlantic-Little, Brown. 218 pp. $9.95.*

One of the major subjects of this book is the loss of character among American authors, editors and publishers. Character is now considered an old-fashioned concept, but it is the only idiom appropriate to the situation. The breakdown appears in the book itself by the publisher's failure to provide a comprehensive index for a work that is filled with names, topics and themes. Little, Brown and the Atlantic Monthly Press should be deep-fried along with their computer chips.

Frances FitzGerald has an instinct for important issues, does a significant amount of research, and her sentences generally make sense. But an instinct must be focused and directed; and here in her examination of the history textbooks which have given American children their ideas about the United States, she has trouble locating the jugular.

People who have that kind of visceral sense come in all sizes, colors, classes, sexes, and from all geographic locations. My favorite research file is filled with the cryptic wisdom of such people. FitzGerald is here fumbling around in search of the truth encapsulated in ten words by Owen Bassingthwaighte, an Australian rancher who, riding in a Toyota pickup, supervises five million acres in the Outback: "You aren't lost until you don't know where you've been." FitzGerald talks endlessly around that wisdom, but she does not have the idiom to integrate all her facts and ideas into a coherent whole.

William Appleman Williams teaches history at Oregon State University. He is president-elect of the Organization of American Historians. He will shortly publish an essay entitled "Empire as a Way of Life," a cultural history of American foreign relations.

Thus, on the turn of a page, the book is fuzzy, contradictory, stimulating, hard-headed, banal and important. She has done what some professional historian should have done long ago, and I salute her. It is a revealing document of our time: not only in Bassingthwaighte's marvelous phrase about being lost but also in the way it charts the failure of historians to cope with the tumbling of our cultural compass.

The following remarks, generally presented in keeping with FitzGerald's own organization, should be judged against these criteria: I have been teaching the basic American history course to college and university freshmen and sophomores since 1949; I have been through the wringer of writing and finally publishing a textbook for upper-division college students, and I have parented (with and without wife) five children of the generations FitzGerald is talking about, in the course of which I read their American history and social science textbooks and talked well into many mornings with my children and their teachers about those books. And about history.

Given that background, the first thing to say is that FitzGerald stumbles coming out of the starting gate. For if one is going to do critical analysis of historical methodology and interpretation, then one must establish a point of reference. She does not need to become a professional historian (Henry Adams forbid), but she should have given us her bench mark. She might reply that she has done this in discussing the work of David Muzzey, but I would insist that we need something beyond that.

Instead, FitzGerald begins by asserting that the children of the 1950s "believed in the permanence of our American history textbooks," and were accustomed to "memorizing a chapter a week." There is no evidence offered in support of that astonishing claim; and indeed, on page 17 (and several times on down the line), she admits that the "nature of the influence that these textbooks have on children is, of course, another matter." It certainly is, though she never confronts that issue, and not the least of it is the struggle between the teacher committed to history as a way of learning and the child who is being socialized by a corporate culture and government that view history as a threat to be transformed into an instrument of pacification.

Certainly 80 percent of the freshmen I deal with know that they have been fed pablum in the name of history and social science. But, given a chance *to do history*, they become excited, energetic and steadily more tough-minded. They read and think about the assigned books instead of memorizing them. They ask the marvelous kind of naïve questions that open the subject, often wander the library finding off-beat sources and write surprisingly good essays. They are in truth hungry to do history.

FitzGerald has a sense of what doing history is all about, and from that perspective praises the "inquiry" or "discovery" texts that challenge the student to make sense out of various documents. She also recognizes that many parents and other groups do not want children taught to make sense of reality or to understand the relationship between yesterday and tomorrow. But she fails to integrate all that into a tough and cogent analysis.

Even so, she is superb (albeit too polite) on the structure, dynamics and ideology of the textbook publishing industry. It is a disgusting and disgraceful business. She quotes one of the princes of that court as finding it "shockingly political," but why anyone should find it shocking is beyond my ken. I would also enter a caveat concerning FitzGerald's remark about trade publishers being delighted to publish "controversial" manuscripts, and give her all the footnotes she can file.

She goes on to remark upon another aspect of the system: the failure of academics to assert their right to write their own sort of history. Granted that teachers are not notably excited by or effective in organizing on intellectual issues, it remains true that they could effect significant changes in the process if they made a sustained effort. One has the strong impression, however, that they want the illusion of influence, and the money, as much as the publishers do. And so historians have become ever more creatures of the culture instead of leaders of the culture.

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FitzGerald misses this point in her discussion of the early textbook historians. They were consciously laboring *to create a culture and an ideology.* Here she would have benefited from Jehoshua Arieli's remarkably fine essay on individualism and nationalism in American history. He explains the vital role of ideology in creating national identity: the early historians and other textbook writers were developing an ideology with all their talk about manners and morals, and their anti-foreign rhetoric.

She also neglects the enormous influence of George Bancroft, Francis Parkman and William Prescott. History in that era transcended the textbook, and those writers informed children through their parents as well as their teachers—whatever the assigned reading. And here we have the key to the weakness of FitzGerald's study. Bancroft and the others, even Muzzey, were generating an ideology most accurately described as Empire as a Way of Life. What she calls the "romance" of Daniel Boone, or the Alamo, is in truth the sugarcoating on sustained imperial expansion.

FitzGerald is good, even excellent, on bits and pieces of this central theme of American history, but she never names and defines and describes it. Thus, she has no framework within which to deal with the textbook turmoil of the 1960s and later: all she can say is that "what changes is nothing less than the character of the United States." That is highly doubtful for the simple reason that the economics, ethics and psychology of empire remain alive and active. Consider only the current flap over Cuba, the demand for ever more nuclear and conventional armaments, and the persistent hero worship of Henry Kissinger.

The fumbling in the textbooks that she calls "remarkable" and surprising is neither unusual nor difficult to explain. It is a natural manifestation of reality—the Empire at Bay. A culture predicated upon empire finds itself challenged at home and abroad. Of course the texts are confused and contradictory. The culture is perplexed because for the first time it is facing the necessity of questioning its traditional assumptions, practices and ideology.

As Bassingthwaighte said, we are lost because we have suddenly discovered that we do not know where we have been. Historians bear a goodly share of the responsibility for this bewilderment—and for the resulting frustration, anger and fundamentalism. Empire is a most seductive, and often rewarding, way of life. It has for centuries attracted a significant portion of the lower classes if only because it offered them various avenues of involvement and improvement. And, like it or not, in America it has given substance to the rhetoric about equal opportunity and upward mobility. The United States defined by the Peace Treaty of 1783 would have developed in vastly different ways from the one created by the acquisition of the Floridas, Louisiana and the northern half of Mexico. To say nothing of the subsequent overseas expansion.

FitzGerald's second essay, "Continuity and Change," offers some stimulating commentary on the treatment of blacks and Indians, Reconstruction, post-Civil War immigration, economic forces and the urbanization of the society. Her skewering of authors and editors for their failure to describe economic reality, and its relationship to—interpenetration of—the political and social life of the society is perhaps the best part of the book.

But she fails to follow through on that analysis in her subsequent discussion of the nature of education. American classrooms have always been informed by the political economy, whether it was Puritan, slave based, mercantilistic, Jacksonian laissez faire or corporate. That is simply a fact. One can evaluate or judge the results from several vantage points. But to neglect entirely, as she does, the twentieth-century power of the corporations in defining both the curriculum and the pedagogy of American education is like buying new horses and leaving the barn door open.

Other weaknesses come through in a long paragraph on what it would mean to discuss the Indians or other groups from their point of view. FitzGerald makes her central point very sharply: it would be difficult—but then drifts off into a peculiar conclusion: If that were done, "the message of the texts would be that Americans have no common history, no common culture, and no common values, and that membership in a racial or cultural group constitutes the most fundamental experience of each individual. The message would be that the center cannot, and should not, hold."

FitzGerald is flat wrong. It *could* mean what she says it means, but it could also mean at least two other things: (*1*) the various perspectives became integrated from above by whites who embraced empire as a way of life (as it happened); or (*2*) history suggests the need for new principles, definitions and practices on the part of the center. Hence, such a textbook would not have to be the one she describes. It could, indeed, be excitingly realistic. If we had such a text it is just possible that we would not be as lost as we are.

In all of this, FitzGerald repeats her earlier misapprehension of nineteenth-century historians and their textbooks. They were in truth changing the culture in the process of creating a culture. She makes a valid point about Noah Webster being far less radical than he and others thought he was, but she slights the matter of perception. Americans received Webster as a radical; they saw themselves as a spanking new culture. Let alone the impact of historians like Parkman, Prescott and Bancroft: those nationalistic, imperial historians were at least as important as any scribblers of textbooks. The Europeans in general, and the Americans in particular, were the creators of true culture and civilization. Or, as Martin Green gets it perfectly: "Dreams of Adventure, Deeds of Empire." If only FitzGerald had used that insight to interpret Muzzey!

Finally, this section is also muddled on foreign relations. She asserts that in the textbooks the rest of the world "became important to the United States only in the nineteen-fifties." But she has already noted the psychopathology of Manifest Destiny, and on the next page discusses how "paranoia turned into a militant self-righteousness." Now in truth FitzGerald has it backward. The self-righteousness, beginning with the Puritans and coming on down through the Jacksonians to the Progressives, turned into paranoia. She then makes it clear that various early historians dealt with American expansion in terms of greed and imperialism. Not terribly consistent.

Finally, she announces that texts "cannot describe the overlap between domestic and foreign affairs." If so, then there is no reason to write the essay. Wild stuff. For if a text writer honored FitzGerald's directive to present the reality of the American political

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economy, then said writer would be in a commanding position to describe the interpenetration of domestic and foreign affairs. She is neither consistent nor helpful on this subject.

On the other hand, her essay on "Progressives, Fundamentalists, and Mandarins" provides a fine exposé of the textbook neglect of intellectual history. She then discusses the aversion to reporting domestic violence, and finally sticks a dart into the heart of it all: the way that history has become "a mere matter of opinion."

Very good work. She might have done a devastating comparative history of history around that theme, particularly as she now and again refers to the failure of college and university professors to become leaders. But let us return to the issue of history as a matter of opinion. Back down the line, at least twenty years ago, there appeared a series of pamphlets known as the Amherst Series. They consisted of excerpts from the writings of various historians purporting to make sense of major issues, crises or events in American history. Along with many other young teachers excited about history as a way of learning, of making sense of our past and present realities, I assigned them as reading for my classes. I soon discovered that this was counterproductive. The students became masterful at manipulating considered judgments as if they were tomorrow morning's headlines. They were better than I at that game. They could play Charles Beard off against Carl Becker off against *anybody*, and I was only trying to help them comprehend Madison, Monroe and John Quincy Adams. I stopped assigning the Amherst Series and sent the students to the primary materials.

In that sense, and it is not at all incidental, FitzGerald is right on the mark: "Children can see the contrast between these fictions and the world around them." Near the end of this third essay she tells the marvelous story of white middle-class kids sent into the black slums. They returned saying "we're the ones who get the good end of the deal. . . . We talk about the things we don't intend to change. Why change a situation which puts us right where we want to be and other people . . . so far away we never even need to know that they exist?"

Such is the failure of history in America. It informs no one, not even the professors, of the relationship between the past and the future. It fails to provide you with the sense that what is so far away today will tomorrow be roosting on your doorstep.

So, whatever my criticisms, I thank FitzGerald for bringing it all into the open. I hope that she is not too late. □

Taking Hold

ERNST PAWEL

THE HOUSE OF HUNGER: A Novella and Short Stories. *By Dambudzo Marechera. Pantheon Books. 160 pp. $7.95.*

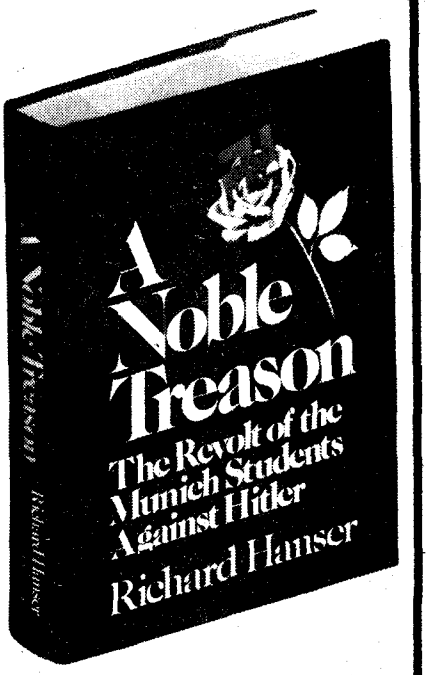
In simple truth, *The House of Hunger* marks the stunning debut of a remarkable new writer, a young Zimbabwean currently living in England.

Truth, however, is seldom simple, now less so than ever. Words, for one thing, are even more inflated than our currency, the common debasement no doubt deviously linked to common causes. Doris Lessing calls Dambudzo Marechera a genius, appropriately so; no lesser word will do for a man who so exultantly reinvents language as he does. But in the land of hype, multi-million-dollar advances now make a genius out of any two-bit scribbler, so where does this leave Marechera?

A far more intractable problem is the ambiguity of black-white relations. This, of course, lies at the heart of the book, and it infects even the most straightforward statement about it. An immensely gifted young African, Shona-speaking, born and raised in the corrugated hellhole of an African township, dipped no more than half-willingly into the acid bath of white culture as represented by the likes of Ian Smith, expelled from the University of Rhodesia—no formal degree could be more meaningful—has dug up the English language by the roots and joyfully taken possession of it. Is this why one should hail him? Is listening to how he says it yet another way of not hearing what he has to say?

Ernst Pawel is a novelist—From the Dark Tower, In the Absence of Magic *(both Macmillan)—who frequently reports on literary and political developments abroad.*

"A dramatic, touching book which cannot fail to move the reader."
–Washington Star



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"**A compelling narrative and a fine piece of research.**"
–*Los Angeles Herald Examiner*

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The question seems fatuous in the presence of a writer whose every sentence is a coilspring loaded with the tension between reason and fury. But of all the contradictions in which Marechera finds himself trapped, this is the one he has managed to reconcile, and with superb grace. The others he lives with; they are the subject of his book.

For he is a man caught between the lines. Not one confused about his identity who can't tell friend from foe. On the contrary, he knows the enemy, knows him far too intimately to share the indiscriminate fanaticism of his brothers. Vision tends to be a crippling disadvantage in the lightless jungle of blind violence, but it is a price the writer must be prepared to pay.

That is why Marechera is an outcast twice over—alienated from his people, few of whom will ever read him, suspect among the whites, whom he indicts in their own language. It is a dilemma central to the black experience and to the situation of Third World intellectuals generally, most of them stranded somewhere between the wreckage of Christian imperialism and the unredeemed promise of Marxist redemption. There is no conflict of loyalties—not a moment's doubt, certainly, where Marechera's loyalties lie. Rather, it is a matter of being at war with oneself, and no one to my knowledge has written better about it, and to more chilling effect.

The House of Hunger, a longish novella that comprises the bulk of the book, is a masterpiece, an autopsy on Rhodesia that cuts into both past and future and examines the rotting tissue with an incorruptible eye. The language soars, not with revolutionary fervor or literary effusion but with a sardonic compassion and force minted in agony. The atrocity of colonization and its aftermath, the ultimate brutalization of victims and victimizers alike, comes alive in scene after scene—stark visions screened without comment. The book crackles with vital humor and exuberant obscenity, but there isn't a single sermon in it.

The shorter pieces are, in essence, addenda to the novella in both subject matter and viewpoint. Not all of them are fully developed, but taken together they further affirm the miracle of an African writer who has neither resolved his conflicts nor allowed himself to be deluded by hope, faith or charity and yet has found the strength to survive. It must have taken inhuman strength, precisely because Marechera comes across as so intensely human. And in that sense, there is hope in *The House of Hunger*. □

N.Y. FILM FESTIVAL I

HAROLD CLURMAN

I much preferred the pictures I have seen thus far at the New York Film Festival (Avery Fisher Hall, Lincoln Center) to the plays I have attended during the theater season's opening days.

Wise Blood, John Huston's cinematic adaptation of Flannery O'Connor's first novel, is an honestly stark and impressive film. It corresponds to the nature of the writer's work. "The religion of the South," she has said, "is a do-it-yourself religion, something which I, as a Catholic, find painful and touching and grimly comic. It's full of unconscious pride that lands them in all sorts of ridiculous predicaments. They have nothing to correct their practical heresies and so they work them out dramatically."

One does not have to be a Catholic to grasp the horror and the humor of her story. What we see is the insanity of a distorted religiosity as it affects those so imbued with it that they cannot rid themselves of it, even in apostasy. Hazel Motes (Brad Dourif), a young man back from service (in Korea or perhaps Vietnam), arrives in the mortifying dreariness of Millidgeville, Georgia, resolved to espouse a "Church of Jesus Christ Without Christ." He is determined to free himself from the incubus of the moldering Baptist faith in which he was raised. He preaches "a church where the blind do not see and the lame do not walk and the dead stay that way." But Millidgeville (where he patronizes an obscenely obese whore) is a dead town: its sparse population provides no adequately numerous flock. He goes to a larger city.

There, on top of his farcically crippled car, bought for $225, he begins his mission. Small crowds gather to hear

Victorian Courtship
The Story of Beatrice Potter and Sidney Webb
Jeanne MacKenzie

The handsome, willful daughter of a wealthy railway executive and the homely, egocentric son of a Leicester Square hairdresser made an odd couple indeed in Victorian London, yet they embarked on a marriage that endured for half a century. With candid excerpts from letters and diaries, this book offers an intimate portrait of the partnership whose accomplishments include founding the London School of Economics, launching *The New Statesman*, and playing a major role in shaping social reforms we take for granted today.
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GARY MARK GILMORE,
by Utah volunteer
firing squad,
January 17, 1977

JOHN SPENKELINK,
in the Florida electric chair,
May 25, 1979

JESSE WALTER BISHOP,
in the Nevada gas chamber,
October 22, 1979 (?)

Some countries have abolished capital punishment, but it still exists in South Africa, the Soviet Union, Ghana, Iran —and the United States. We are now returning to the practice of court-ordered, ritualistic killings on the false and appalling theory that killing human beings is an acceptable solution to the problem of violent crime.

STOP OFFICIAL KILLING IN AMERICA!

38 states now have death-penalty laws.

550 people are already under sentence of death, and more are being sentenced every month.

Between 1930 and 1967, we executed over 3,800 men and women. We are now beginning again. There will be many executions in 1980, and more in succeeding years—*unless* there are funds for lawyers, investigators, and expert witnesses, for vigorous demands for executive clemency, and for persistent advocacy to abolish capital punishment in the United States.

Your support of the NATIONAL COALITION AGAINST THE DEATH PENALTY will help stem the tide of executions.

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him; a glib huckster attempts to bribe him into sharing profits in collecting contributions among the gullible inhabitants. When Hazel refuses to cede to the dirty game, the petty racketeer hires a poor wight to deliver the same spiel Hazel has engaged in. Hazel in his car runs down the substitute preacher, killing him.

Hazel is seduced by a teen-age and libidinous moron (Amy Wright) who has been the aide of a fake blind man purveying "religious" leaflets. But Hazel is still bedeviled by his guilt (he is not "clean," he says), a guilt inspired by his diseased conscience. He martyrs himself with self-inflicted wounds and dies in the presence of his boarding-house landlady who loves him.

What is crucial here is the anguish of loneliness which everyone in the environment suffers. Everyone is bereft of healing companionship and genuine spiritual sustenance. The atmosphere—through the characters—is, for all its grotesque features, one of sadness and benumbed compassion. Hazel at one point says with fanatic conviction, "A man who owns a good car does not need justification." The picture's meaning extends beyond Georgia.

It is well played by the entire cast and photographed in black and white in a manner which bespeaks its content.

James Ivory is a director of gentle touch. His cinematic tone is muted. (You may remember his *The Householder, Shakespeare Wallah* and *Autobiography of a Princess.*) His latest film is based on Henry James's 1878 novel, *The Europeans.* The choice of material becomes the director.

Those who know the book may find fault with the picture's reduction of irony; there is an element of venality in the story's "Europeans"—Americans who for many years have lived abroad (Paris and Vienna) and have returned to their cousins in the Boston vicinity largely for the purpose of seeking advantageous marriages among their well-to-do relatives. Most of the mild and discreet deprecation in the film is aimed at the Bostonians.

Some may find the film boring. It is slow, understated, hardly "dramatic." I found it emollient and rather a relief from the brutal ugliness at which I flinch in most of today's films and

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BREATH

At the peak of noon the world pauses
(for a moment only) as if
something huge were holding its breath.

A moment only. And a prayer
(as it would be named, were we not afraid of it)
goes up up into that sky

where an old man used to sit on his throne
keeping his eye on things
(but he's sly, he has changed his look) . . .

And the self is caught in silence there,
suspended in its reach
to otherness, and held—

till the moment's life-in-death
passes, and the whole round sum
(mirror of what could not be thought)

breaks into multiplicity:
the randomness of fragments
from which we build the day.

Frederick Morgan

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plays. The photography of the New England countryside in its autumnal colors is quite beautiful, and equally so the aspect and furnishings of its houses. The acting too—Lee Remick, Robin Ellis, Wesley Addy, Lisa Eichhorn and all the others, in their modest and unemphatic performances—is excellent, in key with the quality of gentility and niceness characteristic of James's early manner.

Angi Vera is a soberly forthright depiction of the "ritual" of self-criticism —public "confession" of lapses in Communist virtue—in the Stalin-dominated days of Hungary, 1948. The director, Pál Gábor, was born in Budapest that year.

There is no element of caricature in his film, though it may cause derision among our audiences, for we too readily forget how long we put up with McCarthyism. The difference, however, is that there was some resistance to the American blight, whereas the Stalinist procedures were official and mandatory. A believing Communist in Eastern Europe today might either experience a chill of retrospective guilt or feel proud that those evil days are (presumably) done with. The picture is itself a piece of national self-criticism, albeit of a past era.

The story tells of an uneducated girl, Angi Vera, who, because she has the courage to denounce the corruption and wretched conditions in a hospital in which she has a menial job, is selected to study in a special group for workers—miners, nurses and others—so that they may become informed leaders to their like.

Vera is most assiduous in her studies, becomes the favorite of a functionary of the group, a woman of rigid discipline, as well as of the head instructor, a married man who has a son. Vera falls in love and goes to bed with him. When the final session of self-criticism is held she confesses her breach of discipline—a confession unwelcome to the investigators because Vera is a prize, that is, a useful student. The man in the case openly avows his love for the girl; he is immediately removed from his position. But Vera denies that she loves him (which is not true) and declares that she was merely infatuated with the man because of his authority and high station. Thus she saves herself and is assigned a valuable post in journalism.

Gábor does not stress his point, but the sequences that picture how the smugly arrogant party representatives deal with those called upon to testify against themselves—the humiliations they are subject to—are enough to raise the hackles. In one instance, a woman in the group cries out to the chairman, "You have no right to talk that way to an old Communist." She gains no favor for her boldness.

The simple men and women of the study group are presented with unsentimentalized sympathy in their seriousness and in their play. There is an unaffected intimacy in the portraiture which makes us believe in the reality of these ordinary yet sturdy people. The acting throughout has an absolute authenticity. The photography, though the sepialike color and darkness of many scenes may be overdone, is nevertheless quite handsome and convincing in mood. □

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FILMS

ROBERT HATCH

Rainer Werner Fassbinder's *The Marriage of Maria Braun* opens as that ceremony is performed under a rain of bombs, the papers signed as bride, groom and officiating clerk scurry about on the reeling plaza in a black Keystone comedy episode. The next day Hermann Braun (Klaus Löwitsch) returns to the Russian front, whence he is soon reported missing in action, and the film thereafter is an account of how Maria (Hanna Schygulla) prospers in the black market society of occupied Germany. Smart, resourceful, tough-minded and matter-of-factly lustful, she parlays two packs of G.I. cigarettes by fortunate stages into a job as chief strategist of a reconstituted textile firm; she also becomes the owner's mistress and on his timely death inherits, with her Enoch Arden husband who had made a complacent pact with the industrialist, the considerable estate. The Brauns then die in a gas-stove explosion that echoes the circumstances of their wedding day and obviates the question of where they might go from there.

I telescope the steps whereby Maria

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advances from bombs to riches, omitting for one thing an idyllic passage with a black U.S. sergeant whom she dispatches with a wine bottle to the head when that gesture seems appropriate, and whose child she opportunely bears dead. The point made at every milestone of Maria's journey is that she never makes a misstep—that she is infallibly in command of herself, of the immediate situation and, above all, of the men who cross her path. In this respect, *The Marriage of Maria Braun* reminds me of a time before World War II when the little woman with the will of iron had a considerable run on the American screen. As I remember the basic plot, she inherits a rundown ranch from her lovable but improvident father, and puts the business on its feet and the hired hands in their place, principally by slapping her boots with a riding crop. It turns out to be not as good a role as an actress might expect because, do what she can to humanize her performance, she turns into a kind of *mater ex machina*, more leather and rivets than flesh and blood. Ms. Schygulla has that problem: her Maria is initially a woman of grace and courage in whom one invests a good deal of sympathy, but as she progresses from feat to coup she becomes increasingly immune to circumstance, until at the end there is nothing to be done but permit her the uncharacteristic, and I thought improbable, error of blowing out a gas flame.

It is relevant here to note that Fassbinder is homosexual and has said, "Homosexuality is probably a factor in all my films." I think it operates in this film by making him so remote from his heroine that he sees the human race as composed of men, on whom a woman acts as a force of nature, unaffected by human impulse or error. At the start, Maria seems palpable, but as she rises she recedes into symbolism, becomes an object of awe. Then at the end, when the Brauns at last face each other and the prospect of a future together, Fassbinder arbitrarily snuffs them out with a neat but easy bit of irony. It is a device that is most likely to recommend itself to someone who cannot feel how men and women manage to pool their differences in a common life. I am aware when I say this that the film is made from a screenplay by Peter Märthesheimer and Pea Fröhlich, about whom I know nothing; Fassbinder, after all, chose to film their text and, I assume, shaped it to his needs.

And Justice for All, directed by Norman Jewison and with Al Pacino in the lead, is a powerful movie, ill-tempered, out to pick a fight with the practice of criminal law in this country. Without doubt it is gripping, not to say grueling, but that is a little beside the point. What is needed, perhaps, is not a review but an appraisal by a fair-minded legal insider. He or she is invited to come forward.

One must admit that the story (by Valerie Curtin and Barry Levinson) is congested with baleful incident: a judge (John Forsythe) impales his victims on the letter of the law and, his robe put aside, beats young women hired for his pleasure; another jurist (Jack Warden) is a decently extrovert fellow to all appearances, but the conflicts induced by his profession have driven him to inventing variations on Russian roulette; a defense attorney shaves his head and takes to flinging cafeteria dishes down courthouse hallways because a client whose indictment he managed to have quashed went on to kill some children; a black transvestite hangs himself as a consequence of a lawyer having tarried too long over lunch; a youth of unblemished record has lain in jail for two years or more for the single offense of driving with a defective taillight—these and others like them seem an excessive number of horrors to emerge from one Baltimore court of law. Someone is perhaps shouting to make sure he is heard.

However that may be, the central charge made on the basis of such data by Pacino, playing a young lawyer who might be called the moral gadfly of the court, is one that we have heard before. It is that the goal of our adversary judicial system is not justice but victory; that the career stakes are considerable in this game of law, and that the clients are the chips. Perhaps it is because we have heard it before that Jewison, et al. felt the need to be strident, but Pacino, seeming gray with tiredness and the strain of taking risks that exceed his natural bent, is a memorable spokesman for honor in the court.

I would like to believe that the film plays on my feelings for its selfish reasons, that a splendid institution has been libeled by gross exaggeration of rare lapses from probity. But the trouble is that no one incident in itself seems incredible, given what emerges from time to time in the press, and yet any one of them is sufficiently shocking to make one worry about the administration of justice, and particularly to worry in a time of acknowledged social

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An Interview with a 114-Year-Old Magazine

Ladies and gentlemen, we are fortunate in having with us a 114-year-old magazine—THE NATION. How do you feel, sir?

Well, I feel better than the old *Saturday Evening Post*. Ben, I used to call him—you know, after Ben Franklin. . . .

You knew the old *Post*?

Sure, I knew all the big ones. *McClure's*. Always muck, muck, muck, *Liberty*. Nice fellow, *Liberty*. "This article will take you 3 minutes, 45 seconds to read," he'd say, and we'd both laugh.

How about the newer magazines? Do you know them?

Oh sure. I remember *Politicks*. Poor fellow, died young. And *Viva*—never could make up his/her mind. Then there was *New Times*—he's gone too. Had a weak heart—took up *Running*. One thing I can't stand is this new trend to celebrity journalism—all those personality articles.

What's the matter, don't you like people?

No, I don't like *People*.

Some of those old magazines have been revived—*Life*, *Look*, even *The Saturday Evening Post*.

Yeah, they went to Switzerland and had those operations. They're nice—cute, but not the same.

To what do you attribute your long life?

Reading. Exercising my mind. I get a lot of good wholesome fresh opinions and nourishing non-doctrinaire radical and liberal politics. Four or five tough articles every week, plus some good hardball editorials that give my conscience a daily workout. Then I top it off with an intellectual cold shower of invigorating reviews of books, plays, art, music, dance, architecture, television, the media.

What have you learned in your 114 years?

One thing I've learned is, never trust a politician who says he'll never lie to you.

That's good advice.

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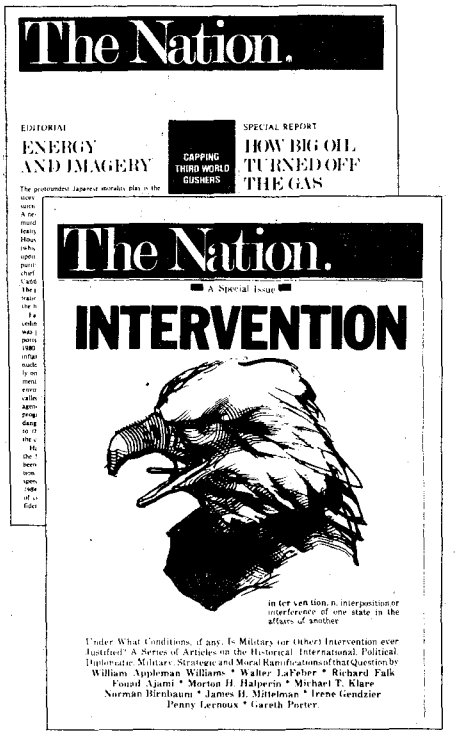
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tension. *And Justice for All* is a picture that deserves a more informed opinion than I am qualified to form.

Drawing from two of Henry James's stories of obsessive withdrawal—but drawing considerably more from "The Altar of the Dead" than from the more celebrated "Beast in the Jungle"—François Truffaut has created a luxuriously melancholy duet for himself and Nathalie Baye. *The Green Room*, as Truffaut must be well aware, runs almost defiantly against the capabilities of film—a story of withdrawal from life, in which the tragedy resides in what does not happen.

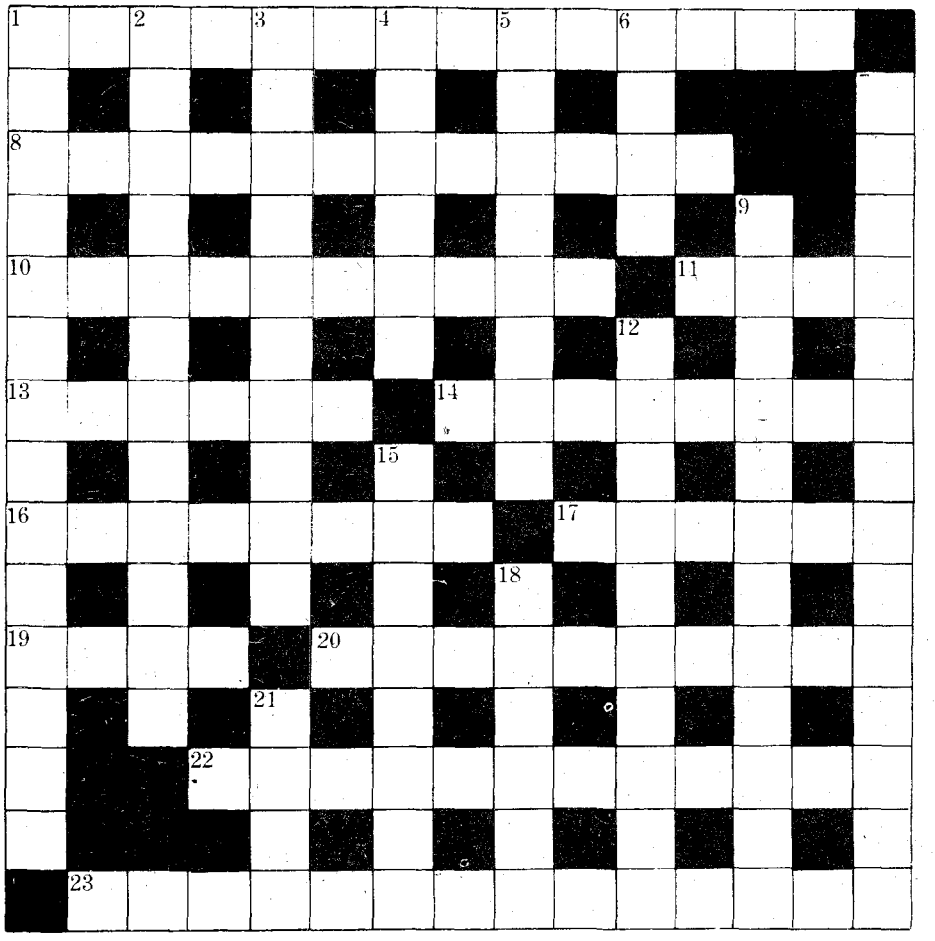
James was a psychologist ahead of his time, but Truffaut has nonetheless somewhat updated his study of renunciation, of guilt sublimated into mission, by making his hero a man who moved unscathed through World War I, while around him his companions perished—as did his postwar bride of but a few weeks. This gives the tale of a life consumed in dedication to the memory of the dead a more "rational" basis than James established for it. At the same time, Truffaut creates for it settings more Gothic than James devised for his tales. The film is more objectively believable (the subjective credence one gives to James is another matter) and more strangely picturesque than the stories; it is more romantic, less intellectually bleak.

And that was probably necessary if the film was to work at all; lacking action, Truffaut had to pile on atmosphere, visual pleasures. Even so, I think it works only because the director is himself so intensely believable as a man in close control of his *idée fixe*. As in *L'Enfant Sauvage*, he hypnotically conveys the idea of a fine intelligence in the grip of a passion. And in the present case he is splendidly abetted by Nathalie Baye, whose beauty supports a remarkable talent for conveying emotion through a glowing passivity.

These two renounce life by making themselves the custodians of the dead; their love for each other, which is at the heart of the film, they mask in mutual celebration of those Others. Jealousy—his envy of her dead—breaks the spell too late. It is a morose tale, made tolerable by the purity of these misled enthusiasts. And, as sometimes happens, the acting outfaces the melancholy. One leaves the theater, at least I did, in a mood of contentment with life. □

Crossword Puzzle No. 1793

FRANK W. LEWIS



ACROSS

1 Mixed race all are in, so the region has frequently changed hands. (6-8)
8 Latin, for example, is inappropriate on a live talk show. (4,8)
10 The sort of tree I claim should be solitary. (10)
11 Fuel back-up with nothing starchy as a foodstuff. (4)
13 It's bad when in hock, like a number in part of Iberia. (6)
14 Relating to the point of an orbit nearest the earth, where a fairy gets a leg broken. (8)
16 The sound of flamenco dancing, with a little left in the glass. (8)
17 Would one be proud to be her mate? (6)
19 and 20 Dance with the head opposite the face, followed by Mike the Private Eye. (You might make a few pounds with it.) (4,4,6)
22 Bought and sold in fancy style. (12)
23 Saving a few people, helicopters might. (3,2,3,6)

DOWN

1 One might before driving to make a speech to the dancers. (7,3,4)
2 In an embarrassed manner, right from the Academy shelf. (12)
3 They might have a rather strict belief, not necessarily following Coolidge. (10)
4 The seed of violent illness? (6)
5 Fancy meat dish served with musical embellishments? (8)
6 Ship cargo—no preliminary number. (4)
7 With a broken body, girl has trouble in crossing. (8,6)
9 Those who play, frequently have to do so. (4,3,5)
12 Teams confuse a lady's seat with it, perhaps. (4-6)
15 Not the top slice of meat, though quite effective in a ring. (8)
18 Antithetical to output. (6)
21 Proper assemblage of sportsmen. (4)

SOLUTION TO PUZZLE NO. 1792

ACROSS: 1 Bigoted; 5 Cajoled; 9 Boarder; 10 Stilted; 11 Leeds; 12, 15, 17 and 18 down Cat on a Hot Tin Roof; 13 Terse; 14 Nations; 16 Echelon; 18 and 27 across The last trump; 21 Cottage; 24 Nabob; 26 Ice; 28 Ogreish; 29 Sandino; 30 and 31 Food for thought. DOWN: 1 Babylon; 2 Gravest; 3 Tides; 4 Directs; 5 and 6 Case the joint; 7 Lateral; 8 Dudgeon; 19 Embargo; 20 Thither; 21 Cresset; 22 Amusing; 23 Exploit; 25 Brief; 27 Tango.

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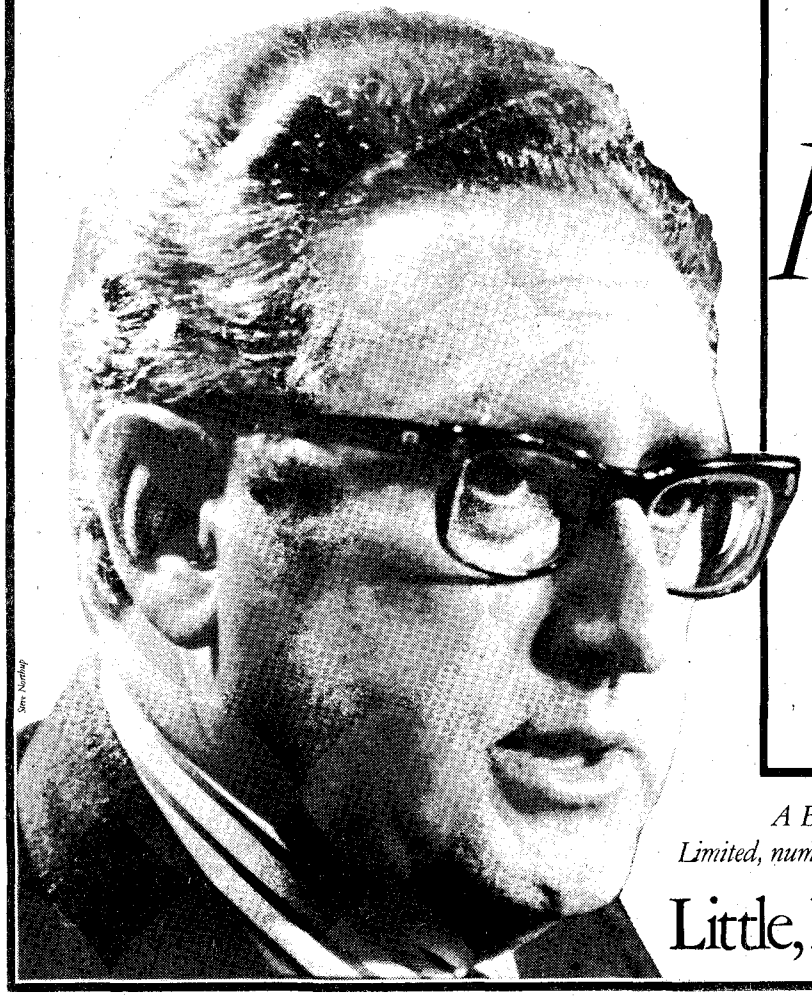
Illustrated with photographs and maps.



Henry Kissinger

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